

ORIGINAL

Decision No. 86803

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion for the purpose of
adopting a Conflict of Interest
Code to govern the conduct of the
Commission and its employees.

Case No. 10084
(Filed April 20, 1976)

Donald B. Jarvis, Attorney at Law, for the Division
of Examiners of the Commission, respondent.
A. L. Gielegem, for himself, protestant.
Kenneth J. Kindblad, for the Utilities Division
staff of the Commission; Alan R. Link, Attorney
at Law and Richard T. Gleed, for California
State Employees' Association; Ann Murphy,
Attorney at Law, and Sylvia Siegel, for TURN;
Julian Ajello and Bruce Blanning, for
Professional Engineers in California Government;
John Dutcher, for himself; and H. W. Hughes and
J. C. Kaspar, for California Trucking
Association; interested parties.
Thomas J. MacBride, Jr., Attorney at Law, for the
Commission staff.

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I N T E R I M O P I N I O N

On April 20, 1976 the Commission instituted an order of investigation for the purpose of adopting a Conflict of Interest Code that shall govern the conduct of the Commission and its employees. A proposed Code was attached as Appendix A to the order of investigation.

Copies of the order and attached proposed Code were delivered by the Executive Director to each Commissioner and to each Commission employee, except those employed in job classifications listed under Title I, Section 2(e)(3), which job classifications were excepted from the definition of "designated employee".

Written comments were submitted by various parties and were received in evidence as Exhibits 1 through 14. Public hearings were held before Examiner Cline in San Francisco on May 24, 1976 and in Los Angeles on May 28, 1976. The matter was taken under submission upon the filing of late-filed Exhibits 15 through 18 on or before June 3, 1976, and the filing of Volume 2 of the transcript on June 9, 1976.

At the outset of the hearing Mr. Gielegem moved that Examiner Cline, the assigned Commissioner, the Commission en banc, and Mr. MacBride, the staff counsel, disqualify themselves from further participation in these proceedings because of their inherent conflict of interest. He suggested that a hearing officer from the Office of Administrative Hearings be designated to conduct the hearing and to prepare the Conflict of Interest Code to be submitted by the Commission to the Fair Political Practices Commission.

Mrs. Siegel of TURN also moved that Examiner Cline, the presiding officer, disqualify himself because he is an employee of the Commission who will be subject to the Commission's Conflict of Interest Code which is the subject matter of this proceeding. She suggested that a Worker's Compensation Judge be designated to conduct the hearing for the Commission. She also requested a proposed report.

The motions were opposed by Mr. Jarvis and Mr. MacBride on the ground that the Political Reform Act of 1974 provides that the Commission's Conflict of Interest Code shall initially be prepared by the Commission itself and that the intent of the act was that the very people who would be affected by the Code have an opportunity to contribute to the preparation of the Code. An independent review of the Commission's Conflict of Interest Code will be provided by the Fair Political Practices Commission prior to its approval of the Code. The motions to disqualify were denied by Examiner Cline for the reasons stated. The Commission hereby approves and confirms the denial of the disqualification motions of Mr. Gielegem and Mrs. Siegel.

Because all parties to this proceeding will have a further opportunity to present their views regarding the Commission's Code to the Fair Political Practices Commission before it approves or modifies the Code, the motion of TURN for a proposed report is hereby denied.

The provisions of the Political Reform Act of 1974 pertaining to the drafting and adoption of a Conflict of Interest Code, which are set forth in the Government Code, read as follows:

"87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

* * *

"87302. Each Conflict of Interest Code shall contain the following provisions:

- "(a) Specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;
- "(b) Requirements that each designated employee file annual statements disclosing reportable investments, interests in real property and income. The Conflict of Interest Code shall set forth for each position or category of positions enumerated under subsection (a) of this section the specific types of investments, interests in real property and income which are reportable and the manner of reporting each item. An investment, interest in real property

or income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be materially affected by any decision made or participated in by the designated employee by virtue of his position. The manner of reporting reportable items shall be substantially equivalent to the requirements of Article 2 of this chapter. The first statement filed under this section by a designated employee shall disclose any reportable investments and interests in real property. Statements shall be filed by each designated employee within thirty days after the effective date of the Conflict of Interest Code. Thereafter, new civil service designated employees shall file statements within thirty days after assuming office. All other new designated employees shall file statements not less than ten days before assuming office or if subject to confirmation, ten days before being confirmed, unless an earlier assumption of office is required by emergency circumstances. The provisions of the Conflict of Interest Code adopted under this subsection shall not be applicable to any designated employee who is covered by Article 2 of this chapter.

- "(c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making or participating in the making of any decision. Disqualification

shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated employee shall be required to disqualify himself with respect to any matter which could not legally be acted upon or decided without his participation.

"87303. No Conflict of Interest Code shall be effective until it has been approved by the Code reviewing body. . . .

* * *

"87309. No Conflict of Interest Code or amendment shall be approved by the Code reviewing body or upheld by a court if it:

- "(a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented;
- "(b) Fails to provide to each affected person a clear and specific statement of his duties under the Code; or
- "(c) Fails to adequately differentiate between designated employees with different powers and responsibilities.

"87310. If the duties of a designated employee are so broad or indefinable that the requirements of Section 87309 cannot be complied with, the Conflict of Interest Code shall require the designated employee to comply with the requirements of Article 2 of this chapter.

"87311. The review of proposed Conflict of Interest Codes by the Commission and by the Attorney General and the preparation of proposed Conflict of Interest Codes by State agencies shall be subject to the Administrative Procedure Act. . . ."

Section 303 of the Public Utilities Code reads as follows:

"303. No person in the employ of or holding any official relation to any corporation or person that is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission. If any such person becomes the owner of such stocks or bonds or becomes pecuniarily interested in such corporation otherwise than voluntarily, his office or employment shall become vacant unless within a reasonable time he divests himself of such ownership or interest."

Those suggested changes in the proposed Code made by various appearances and witnesses during the course of the proceeding which have been incorporated in Exhibits 1 and 1-A of staff counsel MacBride with a recommendation that they be adopted by the Commission are considered noncontroversial and have been included in the Conflict of Interest Code which is attached to this decision as Appendix A. Copies of Exhibits 1 and 1 A are attached hereto as Appendix B.

Other suggested changes which are either rejected or adopted and other changes made by the presiding officer and adopted by the Commission are discussed below.

Issues

1. Should the Conflict of Interest Code be made applicable to members of the Commission?
2. Should all employees of the Commission be included within the definition of designated employee?
3. Should the Conflict of Interest Code specifically list those employment classes included within the definition of designated employee as well as those employment classes excluded from such definition?

4. Should Advisors and consultants to Commissioners be included along with the Executive Director and the General Counsel in proposed Section 12 of the Code for reporting purposes?

5. Should free admission, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service not be considered a gift or income?

6. Should designated employees be required to report and to divest themselves of investments in holding companies and conglomerates which own subsidiaries which are subject to regulation by this Commission?

7. Should the Executive Director be directed to cause to be prepared and to keep on file lists of the names of business entities which are subject to regulation by this Commission?

8. Should the Executive Director be directed to cause to be prepared and to keep on file lists of conglomerates and holding companies which own subsidiaries which are subject to regulation by this Commission?

9. Should designated employees be required to report and to divest themselves of investments in mutual funds, insurance companies, banks, and other financial institutions which have included in their reports to investors investments in business entities which are subject to regulation by this Commission?

10. Should all designated employees be required to report and to divest themselves of investments in business entities of the type regulated by this Commission and doing business in other states of the United States but not doing business within the State of California and not subject to the regulation by this Commission?

11. Should all designated employees be required to report investments in all publicly owned securities and private limited partnerships and trust certificate interests?

12. Should the Conflict of Interest Code require the designated employees to report the interests of their spouses and dependent children in all reporting situations?

13. Should the Conflict of Interest Code require disclosure by designated employees of their memberships on Boards of Directors?

14. What provisions should be included in the Conflict of Interest Code regarding the procedure for disqualification of designated employees?

15. Should a designated employee be required to show the date of acquisition and disposal of investments and interests in real property acquired or disposed of during the reporting periods subsequent to his initial report?

16. Should designated employees be required to report loans from business entities and persons other than close relatives?

17. Should a designated employee be required to file a report indicating "none" if he has no reportable investment or income?

18. Should copies of the reports filed by the designated employees be made available for public inspection at offices of the Commission in San Francisco, Los Angeles, and Fresno and at the office of the Fair Political Practices Commission in Sacramento?

19. Should the Executive Director be directed to supply to the designated employees the report, disqualification, and divestment forms which are required to be filed by the designated employees pursuant to the Conflict of Interest Code and an instruction manual pertaining to compliance with the Conflict of Interest Code?

20. Should the Executive Director be directed to establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to the designated employees.

21. Should the Commission provide a counselor to assist individual designated employees with the preparation and filing of reports, disqualification, and divestment statements required to be filed by the Conflict of Interest Code?

22. Should the Conflict of Interest Code provide that the Executive Director may issue rulings and opinions with respect to questions of designated employees which may arise regarding the interpretation and application of the Conflict of Interest Code?

23. What should the effective date of the Conflict of Interest Code be?

24. What disposition should be made of suggested modifications to the proposed Conflict of Interest Code which do not conform to the requirements and further the purposes of the Political Reform Act of 1974 and Section 303 of the Public Utilities Code?

Discussion

1. Should the Conflict of Interest Code be made applicable to members of the Commission?

Members of the Public Utilities Commission are covered by Article 2 of Chapter 7 of the Political Reform Act of 1974, as amended. Section 87302 of this act in part specifically provides:

"87302. . . . The provisions of the Conflict of Interest Code adopted under this subsection shall not be applicable to any designated employee who is covered by Article 2 of this chapter."

Accordingly, the reporting provisions of the Commission's Conflict of Interest Code will not be applicable to members of the Commission.

2. Should all employees of the Commission be included within the definition of designated employee?

Section 82019 of the Political Reform Act of 1974 makes clear that only those officers, employees, and consultants whose positions entail "the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest" are to be made subject to the Commission's Conflict of Interest Code by being included in the definition of the term "designated employee".

Subsequent to the submission of this proceeding the Fair Political Practices Commission on August 5, 1976 after holding hearings amended 2 California Administrative Code Section 18700(c) to read as follows:

- "(c) A public official or designated employee 'participates in the making of a governmental decision' when, acting within the authority of his or her position, he or she:
- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or
 - (2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:
 - (A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or
 - (B) Preparing or presenting any report, analysis, or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision."

The Commission has taken official notice of amended 2 California Administrative Code Section 18700(c) in determining which of its employees should be included within the definition of "designated employee" and thereby should be made subject to the provisions of its Conflict of Interest Code.

Even though Section 303 of the Public Utilities Code provides that no person shall be employed by the Commission who owns stocks or bonds or is in any manner pecuniarily interested in a corporation or person that is subject in whole or in part to regulation by the Commission, the Commission's Conflict of Interest Code will not be applicable to the large number of Commission employees who are not involved in making or participating in the making of decisions which may foreseeably have a material effect on any financial interest.

3. Should the Conflict of Interest Code specifically list those employment classes included within the definition of designated employee as well as those employment classes excluded from such definition?

The proposed Code, as amended, defines "designated employee" as any person employed by the Commission, including Civil Service employees, Civil Service exempt employees, and consultants, except the following:

- (1) All persons employed in the Administrative Services Division of the Commission except the Chief of the Administrative Services Division and the Fiscal Officer.
- (2) All persons employed in the Reporting Branch of the Examiners Division of the Commission.
- (3) All persons employed by the Commission in certain listed employment classes.

Section 87302(a) requires specific enumeration of positions which are subject to the Code. Therefore, the Code should not contain a catchall provision which may result in certain persons being made subject to the Code who are not involved in the making or participation in the making of decisions of the Commission. The Code adopted by the Commission will specify those employment classes which are included within the definition of "designated employee" and those employment classes which are excluded from the definition of "designated employee". Then each employee may easily determine whether he has been intentionally included or intentionally excluded by the Commission from the definition of "designated employees".

The Code should also provide that employees in employment classes which may have been inadvertently omitted from either list or which may be newly created will be excluded from the definition of "designated employee" until such time as the Code has been specifically amended by the Commission to include their employment classes within the meaning of "designated employee".

The Code should further provide that employees in employment classes which are included within the definition of "designated employee", but who are on terminal vacation or sick leave immediately prior to retirement from or termination of their employment in the service of the Public Utilities Commission of the State of California and at the time this Code becomes effective, shall be excluded from the definition of "designated employee" since such employees will not be participating in Commission action subsequent to the effective date of the Code.

4. Should Advisors and Consultants to Commissioners be included along with the Executive Director and the General Counsel in proposed Section 12 of the Code for reporting purposes?

Advisors to Commissioners and consultants who report directly to the Commission or to a Commissioner, like the General Counsel and the Executive Director, have responsibilities encompassing a broad spectrum of Commission activity. The Code will provide, therefore, that these employees shall report their financial interests pursuant to the broad requirements of Section 12 of the Staff's proposed Code (Section 32 of Appendix A).

5. Should free admission, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service not be considered a gift or income?

Staff counsel on page 4 of Exhibit 16 has pointed out that the FPPC, by regulation, has provided in 2 California Administrative Code Section 18728 as follows:

"...free admission, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service...shall not be considered a payment and, therefore, need not be reported by the recipient as either a gift or income."

The same provision will be incorporated in the Commission's Code.

6. Should designated employees be required to report and to divest themselves of investments in holding companies and conglomerates which own subsidiaries which are subject to regulation by this Commission?

Examples of holding companies which own utilities which are subject to regulation by this Commission are Citizens Utilities Company which owns Citizens Utilities Company of California and The American Telephone and Telegraph Company which owns a substantial majority of the common stock of The Pacific Telephone and Telegraph Company. Lyon Moving & Storage Company which is a trucking company regulated by this Commission is a subsidiary of the conglomerate Transamerica Corporation. The ownership of such subsidiaries by the holding companies and conglomerates is of a relatively permanent nature and is for the purpose of controlling the management and operations of the subsidiaries.

The proposed Conflict of Interest Code should require the reporting of interests in holding companies and conglomerates which are doing business in California and which own interests in business entities which are subject to regulation by this Commission.

In our opinion, because of Section 303 of the Public Utilities Code, any Commission employee who acquires a pecuniary interest in such a holding company or conglomerate should divest himself of such interest within a reasonable time after he becomes aware that such holding company or conglomerate has a controlling interest in a business entity which is subject to regulation by this Commission. The reporting requirements of the Code will not, however, be extended to those employees of the Commission who are not involved in the making or participation in the making of decisions which may foreseeably have a material effect on a financial interest, though they must divest pecuniary interests pursuant to Section 303 of the Code within a reasonable time.

7. Should the Executive Director be directed to cause to be prepared and to keep on file lists of the names of business entities which are subject to regulation by this Commission?

The Utilities Division and the Transportation Division maintain lists of business entities regulated by the Commission. Such lists should be filed with the Executive Director and be made available for inspection by employees of the Commission who are

concerned with compliance with Section 303 of the Public Utilities Code and the Commission's Conflict of Interest Code. Such lists should also be made available for inspection by any member of the public who may be concerned with the enforcement of the provisions of Section 303 of the Public Utilities Code and the Commission's Conflict of Interest Code.

8. Should the Executive Director be directed to cause to be prepared and to keep on file lists of conglomerates and holding companies which own subsidiaries which are subject to regulation by this Commission?

No lists of conglomerates and holding companies which own subsidiaries which are subject to regulation by this Commission are presently available at the Commission. However, as such lists would be helpful to members of the Commission and its employees and useful to members of the public, the Executive Director will be directed to cause such lists to be prepared and maintained on file for public inspection.

9. Should designated employees be required to report and to divest themselves of investments in mutual funds, insurance companies, banks, and other financial institutions which have included in their reports to investors investments in business entities which are subject to regulation by this Commission?

Mutual funds, insurance companies, banks, and financial institutions from time to time may have funds invested in stocks and bonds of business entities which are regulated by this Commission, and insurance companies, banks, and other financial institutions may also make loans to business entities which are regulated by this Commission.

Such investments are not for the purposes of controlling the operation of and managing the business entities subject to regulation by this Commission, however. Commission employees who have investments in mutual funds, insurance companies, banks, and other financial institutions may have knowledge through the quarterly and annual reports which the employees receive of investments by such business entities in business entities regulated by this Commission. By the time the employee receives the reports, the reporting business entity may have disposed of its investments in the business entities which are regulated by this Commission. Also, as was pointed out by witness Gibson, the employee's pecuniary interest in the business entities regulated by this Commission by reason of his investment in a mutual fund, insurance company, or financial institution may be so small as to be immaterial.

The Political Reform Act of 1974 provides:

"82030. . . .

"(b) 'Income' does not include:

* * *

"(7) Interest, dividends, or premiums
on a time deposit or demand
deposit in a financial institution,
shares in a credit union
or any insurance policy, ...

"82034. . . . The term 'investment' does not include
a time or demand deposit in a financial institution,
shares in a credit union, any insurance policy, ..."

These provisions would support the finding that investments in financial institutions and insurance companies do not create a conflict of interest situation by reason of the investments of the financial institutions and insurance companies in business entities which are regulated by the Commission.

Furthermore all employees of the Commission are members of the Public Employees Retirement System. It would be unreasonable to find that a conflict of interest situation arises for all employees of the Commission or to apply Section 303 of the Public Utilities Code to all employees of the Commission because the latest Annual Financial

Report and Report of Operations of the Public Employees' Retirement System shows that its funds are invested in common stock of American Telephone & Telegraph Company, General Telephone & Electronics Corporation, and Pacific Gas and Electric Company, and bonds of Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, American Telephone & Telegraph Company, General Telephone Company of California, The Pacific Telephone and Telegraph Company, The Atchison, Topeka, and Santa Fe Railway Company, Southern Pacific Company, Southern Pacific Transportation Company, Union Pacific Railroad Company, and The Western Pacific Railroad Company.

We conclude that designated employees of this Commission should not be required to report and to divest themselves of investments in mutual funds, insurance companies, banks, and other financial institutions because they have included in their reports to investors investments in business entities which are subject to regulation by this Commission. Nevertheless, designated employees should report their investments in mutual funds, insurance companies, banks, and other financial institutions which do business in California because such business entities themselves may file complaints against or enter into contracts with business entities subject to regulation by this Commission, which contracts may become issues in proceedings before this Commission.

The following sentence should be included in Section 27 ✓
of Appendix A to indicate that it is not intended to supersede
Section 15:

"The provisions of this section shall not apply to a designated employee who owns or whose spouse owns, directly, indirectly or beneficially, and of which spouse's interest the designated employee has, or should have, knowledge, a ten percent interest or greater in such a mutual fund, insurance company, bank or other financial institution."

10. Should all designated employees be required to report and to divest themselves of investments in business entities of the type regulated by this Commission and doing business in other states of the United States but not doing business within the State of California and not subject to regulation by this Commission?

Counsel for TURN introduced into evidence as Exhibit 11,
Executive Order No. 10 issued May 22, 1975, by the Governor of New York
directing the filing of financial statements by certain officers and

employees within the Executive Department. This order in part provides:

"I. All officers or employees in exempt, non-competitive, or unclassified positions within the Executive Department or any other State department or agency the head of which is appointed or nominated by the Governor, who earn \$30,000 per year or more or who hold policy-making positions as determined by the Governor, and any other State officers appointed or nominated by the Governor, as the Governor may determine, shall, upon the filing of an oath of office and annually on May fifteenth thereafter, file with the Board of Public Disclosure, hereinafter established:

- "1. A current sworn statement of assets and liabilities;
- "2. A sworn statement of income sources for the period of holding office, specifying amounts in excess of \$1,000."

Exhibit 10 introduced by the counsel for TURN in part provides:

"Board of Public Disclosure

"Opinion #20

"That no employee of the Public Service Commission (PSC) subject to Executive Order #10 shall hold any interest, direct or indirect, in companies in New York State or in other states of the type regulated by the PSC. All employees affected by this ruling will be given ninety (90) days from the date of receipt of written notice of said ruling to divest themselves of any current interest in violation of said ruling and to give the Board written verification of same."

Counsel for TURN urged that a similar provision be placed in the Commission's Conflict of Interest Code on the grounds that California, like New York, has been a leader in the field of utility regulation. The character of utility regulation in California may affect the character of utility regulation in other states and in turn have an effect on the value of securities of utilities doing business in other states.

Counsel for the Commission staff contended that Commission employees should not be prohibited from owning investments in utilities doing business in other states because the possibility of a conflict of interest based on pecuniary benefit is too remote. Further, he argued that a provision in the Code requiring the reporting of such investments might be found by the courts to be an invasion of the right of privacy and other constitutional safeguards.

Article 2 of the Political Reform Act of 1974 does not require the members of the Commission to disclose investments in business entities which do not do business in California. Section 87302(b) provides that the manner of reporting reportable items under the Conflict of Interest Code shall be substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act of 1974.

Because of the remoteness of the effect of action by this Commission on investments in business entities of the type regulated by this Commission but not doing business in California and not subject to regulation by this Commission and because of Section 87302(b) of the Political Reform Act of 1974, the Commission will neither require designated employees to report nor to divest themselves of such investments.

11. Should all designated employees be required to report investments in all publicly owned securities and private limited partnerships and trust certificate interests?

Counsel for TURN has requested that the Conflict of Interest Code contain a provision which would require designated employees to report investments in all publicly owned securities and private limited partnerships and trust certificates. However, in adopting a Code, we are bound to adhere to the definitions contained in Chapter 2 of the Political Reform Act of 1974. In exercising our responsibility under Government Code Section 87302(b) to require designated employees to disclose certain investments, interests in real property, and income, we may not expand the definitions of those terms beyond the definitions provided for in Sections 82034, 82033, and 82030 of the Act. We will, therefore, adopt, with minor modifications, the definitions of "investment", "interest in real property", and "income" contained in those sections; and we will only require the reporting of those interests which fall within the scope of those definitions.

12. Should the Conflict of Interest Code require designated employees to report the interests of their spouses and dependent children in all reporting situations?

Counsel for TURN has requested that the Conflict of Interest Code require designated employees to report the interests of their spouses and dependent children in all reporting situations. The Commission, however, will adopt the provisions recommended by the staff counsel which comply with the mandate of Section 87302(b) of the Political Reform Act of 1974 that the manner of reporting under the Conflict of Interest Code shall be substantially equivalent to the requirements of Article 2 of the act.

13. Should the Conflict of Interest Code require disclosure by designated employees of their memberships on Boards of Directors?

Counsel for TURN also requested that designated employees be required to disclose their memberships on Boards of Directors. Such a requirement is not provided for in the reporting requirements of Article 2 of Chapter 7 of the Political Reform Act of 1974 and is contrary to the mandate of Section 87302(b) of the act referred to above. Therefore, such a requirement will not be incorporated in the Conflict of Interest Code.

14. What provisions should be included in the Conflict of Interest Code regarding the procedure for disqualification of designated employees?

The representative of the Examiners Division introduced Exhibit 8 in which he pointed out that Commission hearings often involve numerous parties and witnesses and take many days. For example, in the consolidated hearings on PG&E's rate increase Applications Nos. 54279, 54280, and 54281, there were 89 days of hearing in which there were 50 parties of record, 96 public witnesses, and 63 technical witnesses. Twenty-five parties filed appearances at the prehearing conference, 6 made appearances on the first day of evidentiary hearings, and the remaining 19 filed appearances during the remainder of the hearing. The last appearance was permitted on the 80th day of the hearing.

He pointed out that it would be manifestly unfair to existing parties of record and frustrate the operations of the Public Utilities Commission and the Division of Examiners if, after numerous days of hearing, the subsequent appearance of a new party who has an appropriate interest in the proceeding could cause the disqualification of the presiding Examiner who was not disqualified at the commencement of the proceeding. The Division of Examiners recommends that the

Commission adopt a rule similar to that in Section 170.6 of the Code of Civil Procedure for the disqualification of judges by adding the following language to Section 6 of Title II of the Conflict of Interest Code.

"No Examiner shall be disqualified under this Code after the making of an opening statement by a party, or if there be no such statement, then after swearing in the first witness or after the giving of any evidence or after the proceeding has otherwise commenced."

Counsel for TURN has proposed that an interested party or protestant be able to disqualify one Examiner by filing an affidavit of prejudice or conflict of interest with the Commission, or the Examiner to whom the matter has been referred, on or before the first day of the hearings. She proposed that the affidavit be in a form substantially similar to that required to disqualify a judge pursuant to Sections 170 through 170.6 of the California Code of Civil Procedure. The difficulty with this suggestion is that in some proceedings there are a sufficient number of interested parties and protestants to disqualify all 27 Examiners in the Examiners Division and thereby prevent the matter from going to hearing if each interested party and each protestant has the absolute right to disqualify one Examiner.

Counsel for CSEA suggested that this Commission include in its Conflict of Interest Code a provision similar to the following provision in the proposed Conflict of Interest Code of the Franchise Tax Board:

"(3) Manner of Disqualification. In the event a designated employee is assigned a case in which the employee has a financial interest, and the assignment involves the making or participation in the making of a departmental decision, the employee shall so inform his or her supervisor and request disqualification.

"If the supervisor determines disqualification should occur, he or she shall immediately reassign the case to another employee. If the supervisor determines the employee is not disqualified and refuses to reassign the case, the employee may cause a review of the supervisor's determination by following the procedure described in paragraph (4) herein.

"(4) Administrative Review of Disqualification Determinations and Other Administrative Determinations. An employee who sought a disqualification determination from his or her supervisor and received a determination that he or she was not disqualified, may file a disqualification statement with his or her supervisor. Exhibit A of Appendix 1 shall be used for this purpose. The supervisor shall indicate his or her reasons for refusing to disqualify the employee. The employee shall have the right to an appeal and an administrative review of the supervisor's decision. The employee who seeks review shall, within 5 days of the decision, forward it and a written memorandum setting forth the reasons for review to the employee's division chief. The division chief shall review the appeal and endorse his or her recommendation thereon and forward the appeal to the Assistant to the Executive Officer. The Assistant to the Executive Officer or his representative shall, within 10 days of receipt, decide the appeal.

"The decision of the Assistant to the Executive Officer shall be final and nonappealable within the department. If the Assistant to the Executive Officer finds the employee is not disqualified, such determination shall render the designated employee immune from any disciplinary action that could be initiated by the department. In like manner, the supervisor, when determining disqualification, shall be immune from any disciplinary action that could be initiated by the department.

"Where a claim or action is filed under the Political Reform Act of 1974 against a designated employee and said employee has complied with the provisions of this Code and has been acting within the scope of his employment the department shall undertake the employee's defense under the provisions of Part 7 (commencing at § 995 et seq.) of the Government Code.

"The department's liability for any subsequent judgment or any payment pursuant to any compromise or settlement on such claim or action shall be governed by the provisions of Government Code § 825."

Section 87103 of the Political Reform Act of 1974 in part provides:

"87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, ..."

In our opinion by reason of this section a designated employee who has a financial interest in a ratepayer (e.g., a large commercial or industrial concern) which is a member of a class of ratepayers whose rates are involved in a Commission proceeding would not thereby be prevented from participating in a proceeding under the Conflict of Interest Code even though the ratepayer has entered an appearance and actively participates in the proceeding. The decision of the Commission will not be directed toward the particular ratepayer but to the class of ratepayers to which he belongs. It, of course, follows that no conflict of interest situation arises because a designated employee who is participating in a rate proceeding is himself a member of a class of customers whose rates are in issue in the proceeding.

The Conflict of Interest Code should also give consideration to a method by which a designated employee may purge himself of the conflict of interest by divesting himself within a reasonable period of time of the financial interest creating the conflict of interest. In our opinion if the designated employee files a divestment statement with the Commission stating that he will dispose of the financial interest creating the conflict of interest within a period of thirty days after the filing of the divestment statement he should not be required to file a disqualification statement and should be permitted to continue with his participation in the Commission proceeding.

The difficult situation will arise where there is a conflict of interest situation and the designated employee seeks to disqualify himself rather than to divest and the interest of the public is opposed to such disqualification. It should be noted here that in instances where the conflict of interest situation has arisen because of the reportable investments of a spouse or dependent child, the spouse or the custodian or trustee for the dependent child may refuse to divest and the designated employee will have no alternative other than to file a disqualification statement. In our opinion these situations can best be resolved by submission of the disqualification statement to the designated employee's supervisor. Then if the supervisor refuses to disqualify the designated employee his subsequent actions should not be considered a violation of Article 1 of Chapter 7 of the Political Reform Act of 1974 and of the Conflict of Interest Code and the designated employee should be absolved of and held harmless from all legal expense and penalties which might otherwise be imposed upon him under the Conflict of Interest Code and the Political Reform Act of 1974 by reason of his action despite his declared conflict of interest. Of course the Executive Director should have the opportunity to reverse or confirm the action of the supervisor in directing the designated employee to resume or continue his work despite his declared conflict of interest.

The Commission is aware that serious regulatory lag may result if a party to a proceeding seeks to disqualify an Examiner because of an asserted conflict of interest. For example, assume that on the fortieth day of hearing in Los Angeles on a general rate increase application of Southern California Edison Company the reasonableness of Edison's fuel oil supply contracts with Standard Oil Company of California, Texaco Inc., Exxon, and Atlantic Richfield Company become issues in the proceeding. Twenty different parties are participating in the hearing. The presiding officer's wife who owns 300 shares of Standard Oil Company of California has told him she will not sell the stock because she thinks it is a good investment and also for sentimental reasons because she inherited it from her first husband who was an employee of Standard Oil Company of California. The dependent son is the beneficiary of a trust created by his wife's deceased father, the trust owns 200 shares of Exxon, and the presiding officer has no control whatsoever over the actions of the trustee. Under such circumstances the presiding officer may have no alternative but to adjourn the proceedings for a sufficient length of time to give the Commission an opportunity to act on the motion for disqualification at a public Commission Conference. If the Edison hearing was on a Tuesday there would be at least one week delay until the Commission's Conference the following Tuesday and in some few cases a further week delay because the absence of a Commission quorum may have prevented the scheduling of a Commission Conference on the succeeding Tuesday. Unless the Commission then determines that public interest requires the continued participation by the presiding officer, there would be further delay resulting from the replacement of the presiding officer.

The Conflict of Interest Code will provide that once a hearing has commenced a designated employee who is participating in the hearing must continue such participation until his

disqualification statement has been accepted and his assignment has been referred to another employee. The Conflict of Interest Code will also provide that a person who has or should have prior knowledge of a conflict of interest situation which may disqualify an Examiner and who seeks to disqualify such Examiner from participating as a hearing officer in a proceeding by reason of a conflict of interest must file the motion to disqualify the Examiner prior to the first day of the hearing of the proceeding.

15. Should a designated employee be required to show the date of acquisition and disposal of investments and interests in real property acquired or disposed of during the reporting periods subsequent to his initial report?

Counsel for TURN has requested that the Conflict of Interest Code be revised to require a designated employee to show the date of acquisition and disposal of investments and interests in real property acquired or disposed of during the reporting periods subsequent to his initial report.

This suggestion is consistent with the provisions of Section 87206(f) of the Political Reform Act of 1974 and will therefore be adopted.

16. Should designated employees be required to report loans from business entities and persons other than close relatives?

Counsel for TURN has also requested that designated employees be required to report loans from business entities and persons other than close relatives. Section 82030 of the Political Reform Act of 1974 includes loan within the meaning of the term "income". Section 13(a) of the Commission's Conflict of Interest Code similarly includes loan within the meaning of the term "income". However, as Section 87103 excludes loans by a commercial lending institution in the regular course of business, such loans will be excluded from Section 13(b)(7) of the Commission's Conflict of Interest Code.

17. Should a designated employee be required to file a report indicating "none" if he has no reportable investment or income?

Exhibit 14 is a copy of the Instruction Manual of the Fair Political Practices Commission entitled "How to Fill Out Your Statement of Economic Interests". The following note appears on page three following Section V 3:

"Note: If you have no interests to declare, write 'none' on the schedule. A blank schedule is not acceptable."

Such a provision pertaining to reports to be filed by designated employees will also be included in the Commission's Conflict of Interest Code.

The request of witness Carberry that designated employees who have no reportable interests not be required to file reports will be rejected in view of the provision in Section 87302(b) of the Political Reform Act of 1974 stating that the manner of reporting reportable items under the Conflict of Interest Code shall be substantially equivalent to the requirements of Article 2 of the Act, and also because the Commission is of the opinion that a negative declaration rather than no declaration will be more informative to this Commission, to the Fair Political Practices Commission, and to the public.

18. Should copies of the reports filed by the designated employees be made available for public inspection at offices of the Commission in San Francisco, Los Angeles, and Fresno and at the office of the Fair Political Practices Commission in Sacramento?

Counsel for TURN has requested that copies of the reports filed by the designated employees be made available for public inspection at the offices of the Commission in San Francisco,

Los Angeles, and Fresno and at the office of the Fair Political Practices Commission in Sacramento.

Section 81005(g) of the Political Reform Act of 1974 provides that the Commission shall retain a copy of all reports and statements required to be filed under the Conflict of Interest Code and forward the original to the Fair Political Practices Commission. The request that copies of such reports and statements be kept on file at the general offices of the Commission in San Francisco and Los Angeles is reasonable and will be adopted. The request that a copy of such reports and statements also be kept on file at the Commission's field office in Fresno will not be adopted as the Commission does not have the personnel at the Fresno office to maintain a file of such reports and statements so that they may be reviewed by members of the public.

19. Should the Executive Director be directed to supply to the designated employees the report, disqualification, and divestment forms which are required to be filed by the designated employees pursuant to the Conflict of Interest Code and an instruction manual pertaining to compliance with the Conflict of Interest Code?

Section 83113 of the Political Reform Act of 1974 provides as follows:

"83113. The Commission [The Fair Political Practices Commission] shall, in addition to its other duties:

- "(a) Prescribe forms for reports, statements, notices, and other documents required by this title;
- "(b) Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this title,

and explaining the duties of persons and committees under this title; and

- "(c) Provide assistance to agencies and public officials in administering the provisions of this title."

Section 81010 provides:

"81010. With respect to reports and statements filed with him pursuant to this title, the filing officer [the Executive Director of the Public Utilities Commission] shall:

- "(a) Supply the necessary forms and manuals prescribed by the Commission [the Fair Political Practices Commission]; ..."

Pursuant to these sections of the Political Reform Act of 1974 this Commission will direct its Executive Director to supply the designated employees with the forms prescribed or approved by the Fair Political Practices Commission for use in connection with this Commission's Conflict of Interest Code and with a manual of instruction prescribed or approved by the Fair Political Practices Commission pertaining to compliance with the Conflict of Interest Code.

20. Should the Executive Director be directed to establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to the designated employees?

The penalties for failure to comply with the Conflict of Interest Code are severe and include the following:

- (a) Discipline by the agency, including dismissal.
- (b) Civil liability for an amount not more than the amount or value of property not properly reported.

- (c) Civil liability for an amount up to \$500 or three times the amount of an unlawful contribution, gift, or expenditure, whichever is the greater.
- (d) Civil liability up to three times the value of an economic benefit realized as a result of a violation of a disqualification provision of a Conflict of Interest Code.

Section 9100 of the Political Reform Act of 1974 provides:

"9100. (a) Any person who knowingly or wilfully violates any provision of this title [the Political Reform Act of 1974] is guilty of a misdemeanor.

"(b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation." * * *

In view of the complicated provisions of the Conflict of Interest Code and the Political Reform Act of 1974, and the severe penalties which may be imposed upon the designated employees for failure to comply with the Conflict of Interest Code it is reasonable for this Commission to direct its Executive Director to establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to the designated employees.

21. Should the Commission provide a counselor to assist individual designated employees with the preparation and filing of the reports and the disqualification and divestment statements required to be filed by the Conflict of Interest Code?

Because of the complicated provisions of the Conflict of Interest Code and the Political Reform Act of 1974 and the severe penalties which may be imposed upon the designated employee for

failure to comply with the Conflict of Interest Code it is reasonable for this Commission to direct its General Counsel to designate a counselor to assist individual designated employees with the preparation and filing of the reports and the disqualification and divestment statements required or permitted to be filed by the Conflict of Interest Code.

22. Should the Conflict of Interest Code provide that the Executive Director may issue rulings with respect to questions of designated employees which may arise regarding the interpretation and application of the Conflict of Interest Code?

Section 23114 of the Political Reform Act of 1974 provides:

"23114. Any person may request the Commission [the Fair Political Practices Commission] to issue an opinion with respect to his duties under this title. The Commission shall, within fourteen days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The Commission's opinions shall be public records and may from time to time be published."

Designated employees should be able to obtain similar opinions with respect to their duties under the Conflict of Interest Code from the Executive Director so that they will be able to perform their duties as employees of the Public Utilities Commission with full knowledge that they are in conformance with the Conflict of Interest Code. The Conflict of Interest Code should provide that such opinions shall be promptly served by mail by the Executive Director of the Public Utilities Commission upon the Fair Political Practices Commission so that the Fair Political

Practices Commission may have the opportunity to advise the Executive Director of any suggestions it may have for revision or modification of such opinions. However, until the opinions are revised or modified the designated employees to whom the opinions are addressed should be able to rely on them with impunity, and any revisions or modifications of the resolutions should be prospective in effect only.

23. What should the effective date of the Conflict of Interest Code be?

The Conflict of Interest Code should not be effective until at least ninety days after it is approved by the Fair Political Practices Commission in order to give the Executive Director of the Commission adequate time to obtain the necessary supply of forms and instruction manuals prescribed or approved by the Fair Political Practices Commission and to distribute them to the designated employees, to give the Executive Director sufficient time to establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to the designated employees, and to give the designated employees a reasonable time within which to divest themselves of any investments and interests in real property which they wish to dispose of in order to avoid possible conflicts of interest which they anticipate might arise in the future and thereby avoid necessity for filing disqualification or divestment statements at the time such conflicts of interest otherwise might arise.

The Conflict of Interest Code will therefore provide that it shall become effective upon final approval by this Commission and no sooner than the first day of the fourth calendar month following the date of the receipt by the Executive Director of the Public Utilities Commission of written notice that the Conflict of Interest Code has been approved by the Fair Political Practices Commission.

24. What disposition should be made of suggested modifications to the proposed Conflict of Interest Code which do not conform to the requirements and further the purposes of the Political Reform Act of 1974 and Section 303 of the Public Utilities Code?

Exhibit 2 of the Golden Gate Section of the Professional Engineers in California Government contains the following comments regarding the proposed Conflict of Interest Code:

- a. "The excessive detail, definitions and monetary limits prescribed by the Proposed Code are an excuse for additional paper-work without any demonstrable benefit."
- b. The only official positions within the Public Utilities Commission are those of the five Commissioners, and all other positions are for the administrative convenience of the Commission and are not official positions.
- c. Section (2)(d) of the Proposed Conflict of Interest Code defines Commission action as the "proposal, drafting, development, consideration, amendment, enactment, or defeat by the Commission of any rule, regulation, or other action in any proceeding before the Commission or any action in which the Commission contracts with a business entity for that entity to provide services or materials to the Commission." It is contended that proposing, drafting, developing, and considering are not Commission actions, and that only those acts undertaken by a majority of the Commission in the exercise of its jurisdiction can be considered Commission actions.

- d. As adherence to the Code of Conduct prescribed for professional engineers by Section 6775 of the Professional Engineers Act ensures that the intent of the proposed Conflict of Interest Code will be carried out by professional engineers, professional engineers employed by the Commission should be exempted from the Conflict of Interest Code.
- e. The reportable interests of designated employees in the Utilities Division prescribed in Section 9 of the Conflict of Interest Code are too general. A staff member in the Gas Branch would have no conflict if he owned shares in a communication utility.
- f. The proposed Conflict of Interest Code requires disclosures which invade the personal privacy of designated employees and members of their families. The reportable interests of designated employees should be confidential and not become public record.

Exhibit 3 contains the following written comments of members of the Utilities Division:

- g. Separate property of the spouse of a designated employee should not be reportable under the Conflict of Interest Code.
- h. There should be no interference with the private or consulting practice of professional engineers on the staff of the Commission. For example, a professional engineer in the Electric Branch should not be precluded from performing consulting services for California airline carriers.
- i. The Conflict of Interest Code should insure that reportable interests will remain confidential.

Exhibit 17 of the Professional Engineers in Government requests that:

- j. The privacy of the designated employees should be protected by the following procedure:
 - A. Statements of reportable interests should be coded so that the employees' names and addresses are not shown.
 - B. A person who requests the opportunity to examine the statement of an employee should be required to specify his reason for the examination.

As the foregoing comments and suggestions do not conform to the requirements and further the purposes of the Political Reform Act of 1974 and Section 303 of the Public Utilities Code they will not be incorporated as provisions of the Conflict of Interest Code.

Findings

1. The reporting provisions of the Conflict of Interest Code should not be made applicable to members of the Public Utilities Commission. ✓
2. All employees of the Public Utilities Commission should not be included within the definition of designated employee.
3. The Conflict of Interest Code should specifically list those employment classes within the definition of designated employee as well as those employment classes excluded from such definition. Employees in employment classes inadvertently omitted from either class or which may be newly created should also be excluded from the definition of designated employee until such time as the Code has been amended to include such employment classes within the definition of designated employee.

4. Advisors and consultants to Commissioners should be included with the Executive Director and the General Counsel in Section 32 for reporting purposes.

5. Free admission, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service should not be considered a gift or income under the Conflict of Interest Code.

6. Designated employees should be required to report and to divest themselves of investments in holding companies and conglomerates doing business in California which they know or have reason to know own controlling interests in business entities which are subject to regulation by this Commission. Other employees of this Commission who may be required under Section 303 of the Public Utilities Code to divest themselves of such investments within a reasonable time after they know or should have reason to know that the holding company or conglomerate owns a subsidiary which is subject to regulation by this Commission should not be required to report such investments under the Conflict of Interest Code.

7. The Executive Director of this Commission should be directed to cause to be prepared and to keep on file for public inspection lists of the names of business entities which are subject to regulation by this Commission.

8. The Executive Director of this Commission should also be directed to cause to be prepared and to keep on file lists of the names of conglomerates and holding companies which own subsidiaries which are subject to regulation by this Commission.

9. Designated employees of this Commission should not be required to report and to divest themselves of investments in mutual funds, insurance companies, banks, and other financial institutions because they have included in their reports to investors investments in business entities which are subject to regulation by this Commission. Nevertheless, designated employees should be required to report their investments in mutual funds, insurance companies, banks, and other financial institutions which do business in California because such business entities themselves may file complaints against or enter into contracts with business entities subject to regulation by this Commission, which contracts may become issues in proceedings before this Commission.

10. Designated employees should not be required to report and to divest themselves of investments in business entities of the type regulated by this Commission and doing business in other states of the United States but not doing business within the State of California and not subject to regulation by this Commission.

11. Designated employees should not be required to report "investments", "interests in real property", and "income", except to the extent that those terms are defined in Chapter 2 of the Political Reform Act of 1974.

12. The manner of reporting investments and interests in real estate of spouses and dependent children of designated employees under the Conflict of Interest Code should be substantially equivalent to the requirements of Article 2 of the Political Reform Act of 1974.

13. The Conflict of Interest Code should not require the disclosure by designated employees of their memberships on Boards of Directors.

14. The Conflict of Interest Code should provide for the purging of a conflict of interest situation by the filing of a divestment statement on the form which is Appendix A to Appendix A attached hereto and the subsequent divestment pursuant thereto by the designated employee.

15. The Conflict of Interest Code should provide a procedure for the disqualification of a designated employee by the filing of a disqualification statement on the form which is Appendix C to Appendix A attached hereto and the subsequent approval of the disqualification by the designated employee's supervisor.

16. The Conflict of Interest Code should provide that where the supervisor of the designated employee determines the public interest requires that a designated employee with a declared conflict of interest not be disqualified, the designated employee should be absolved of and held harmless from all legal expense and penalties which might otherwise be imposed upon him under the Conflict of Interest Code and the Political Reform Act of 1974 by reason of his action despite his declared conflict of interest until such time as the supervisor's determination is countermanded by the Executive Director.

17. The Conflict of Interest Code should make clear that no conflict of interest situation arises with respect to a designated employee who may have a financial interest in a ratepayer which is a member of a class of ratepayers whose rates are in issue in a Commission proceeding even though such ratepayer enters an appearance and actively participates in the proceeding.

18. The Conflict of Interest Code should also provide that any person who has prior knowledge, or should have prior knowledge, of a conflict of interest situation which may disqualify an Examiner from participating as a hearing officer in a proceeding and who seeks to disqualify such Examiner from participating in the proceeding by reason of such conflict of interest must file the motion to disqualify the Examiner prior to the first day of hearing, and that a motion to disqualify an Examiner which is filed after the hearing has commenced shall be referred to the Chief Examiner for decision and the Examiner shall continue to participate as a hearing officer in the proceeding until he is actually disqualified.

19. Designated employees should be required to show the dates of acquisition and disposal of investments and interests in real property acquired or disposed of during the reporting periods subsequent to their initial reports.

20. Designated employees should be required to report as income loans from persons other than close relatives and loans from business entities other than loans by a commercial lending institution in the regular course of business.

21. A designated employee should be required to file a report indicating "none" if he has no reportable investment or income.

22. Copies of the reports filed by the designated employees should be made available for public inspection at offices of the Commission in San Francisco and Los Angeles and at the office of the Fair Political Practices Commission in Sacramento.

23. The Executive Director of this Commission should be directed to supply the designated employees with the forms prescribed or approved by the Fair Political Practices Commission for use in connection with this Commission's Conflict of Interest Code and with a manual of instruction prescribed or approved by the Fair Political Practices Commission pertaining to compliance with the Conflict of Interest Code.

24. The Executive Director should be directed to establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to the designated employees.

25. The General Counsel of the Commission should be directed to designate a counselor to assist individual designated employees with the preparation and filing of the reports and the disqualification and divestment statements required or permitted to be filed by the Conflict of Interest Code.

26. The Conflict of Interest Code should provide that the Executive Director may issue opinions with respect to questions of designated employees which may arise regarding the interpretation and application of the Conflict of Interest Code and the designated employees should be able to rely on such opinions with impunity until such opinions are modified or rescinded with prospective effect only. Copies of such opinions should be promptly filed with the Fair Political Practices Commission and furnished to all affected designated employees by the Executive Director of this Commission.

27. The effective date of the Conflict of Interest Code should be no sooner than the first day of the fourth calendar month following the date of the receipt by the Executive Director of this Commission of written notice that the Conflict of Interest Code has been approved by the Fair Political Practices Commission.

28. The comments and suggestions of parties to this proceeding set forth as part of the discussion of Issue 24 above should not be incorporated as provisions of the Conflict of Interest Code as they do not conform to the requirements and further the purposes of the Political Reform Act of 1974 and Section 303 of the Public Utilities Code.

Conclusion

The Conflict of Interest Code attached hereto as Appendix A should be adopted by this Commission subject to the approval of the Fair Political Practices Commission and further order of this Commission.

INTERIM ORDER

IT IS ORDERED that:

1. The Conflict of Interest Code attached hereto as Appendix A is adopted by this Commission subject to the approval of the Fair Political Practices Commission and further order of this Commission.

2. Upon receipt by the Executive Director of this Commission of written notice that the Conflict of Interest Code attached hereto as Appendix A has been approved by the Fair Political Practices Commission the Executive Director shall so notify this Commission. At that time the Commission shall issue such order as is necessary to effect the final adoption of the Conflict of Interest Code attached hereto as Appendix A. The effective date of the Conflict of Interest Code shall be provided for in that order. After issuance of such order by this Commission the Executive Director shall promptly serve a copy of the order together with a copy of the Commission's Conflict of Interest Code upon all designated employees and the Chairman of the Fair Political Practices Commission.

3. Within forty-five days after the final adoption of the Conflict of Interest Code by this Commission, the Executive Director of this Commission shall supply the designated employees with forms prescribed or approved by the Fair Political Practices Commission for use in connection with this Commission's Conflict of Interest Code and a manual of instruction prescribed or approved by the Fair Political Practices Commission pertaining to compliance with this Commission's Conflict of Interest Code.

4. Within forty-five days after the final adoption of the Conflict of Interest Code by this Commission the Executive Director shall establish a training program to explain the Conflict of Interest Code and the Political Reform Act of 1974 to designated employees.

5. Promptly after the final adoption of the Conflict of Interest Code by this Commission the General Counsel of this Commission shall designate a counselor to advise the Commission and the Executive Director regarding matters pertaining to the Commission's Conflict of Interest Code and to assist individual designated employees with the preparation and filing of the reports and the disqualification and divestment statements required or permitted to be filed by the Conflict of Interest Code.

6. The Executive Director of this Commission is directed to cause to be prepared and to maintain on file for public inspection at the Commission's offices in San Francisco and Los Angeles copies of lists of the names of business entities which are regulated by this Commission, copies of lists of the names of conglomerates and holding companies which own subsidiaries which are regulated by this Commission, and copies of reports and disqualification and divestment statements which are filed by designated employees pursuant to the Commission's Conflict of Interest Code.

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The Executive Director shall cause copies of this decision to be served upon all parties of record in this proceeding and upon all employees of the Public Utilities Commission. The Executive Director shall also promptly cause three certified copies of this decision and a certified copy of the entire formal record in this proceeding to be served by certified mail upon the Chairman of the Fair Political Practices Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 5th day of JANUARY, 1977.

I concur in part and dissent in part and join Commissioner Ross' written concurrence & dissent
Robert Batminal Commissioner
I will file a concurrence & dissent
Leonard Ross Commissioner

Robert Batminal
 President
William J. Quaresima
Leonard Ross
 Commissioners

APPENDIX A

CONFLICT OF INTEREST CODE
TENTATIVELY ADOPTED BY THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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CONFLICT OF INTEREST CODE
TENTATIVELY ADOPTED BY THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Article 1

Title and Definitions

Section 1: This code shall be known and may be cited as the "Conflict of Interest Code of the Public Utilities Commission".

Section 2: Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the interpretation of this code.

Section 3: "Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

Section 4: "Civil service employee" means any state employee who is covered by the state civil service system.

Section 5: "Commission" means the Public Utilities Commission of the State of California.

Section 6: "Commission action" means the proposal, drafting, development, enactment or defeat by the Commission of any rule, regulation, or other action in any proceeding before the Commission or any action in which the Commission contracts with a business entity for that entity to provide services or materials to the Commission.

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Section 7: "Designated employee" means:

- (a) The following civil service exempt employees of the Commission:
 - (1) Members of the Public Utilities Commission
 - (2) Executive Director, PUC
 - (3) General Counsel, PUC
- (b) All employees in the following civil service employment classes:
 - (1) Accounting Officer II
 - (2) Administrative Service Officer III, CEA
 - (3) Advisor to a Commissioner, PUC, CEA
 - (4) Assistant Chief Examiner, PUC
 - (5) Assistant Chief, Finance and Accounts Division
 - (6) Assistant Chief, PUC Counsel
 - (7) Assistant Chief, Transportation Division, PUC
 - (8) Assistant Chief, Utilities Division, PUC
 - (9) Chief, Administrative Services Division
 - (10) Chief Examiner, PUC, CEA
 - (11) Chief, Finance and Accounts Division, CEA
 - (12) Chief, Transportation Division, PUC, CEA
 - (13) Chief, Utilities Division, PUC, CEA
 - (14) Commission Representative, Southern California Area, PUC, CEA
 - (15) Data Processing Manager II
 - (16) Examiner I, PUC
 - (17) Examiner II, PUC
 - (18) Fiscal Officer I
 - (19) Graduate Legal Assistant
 - (20) Information Officer I
 - (21) Information Officer II
 - (22) Legal Counsel
 - (23) Manager, Rapid Transit System Section
 - (24) Principal Public Utility Financial Examiner
 - (25) Principal, Transportation Division, PUC

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- (26) Principal, Utilities Engineer, PUC
- (27) PU Counsel I
- (28) PU Counsel II
- (29) PU Counsel III
- (30) PU Financial Examiner IV
- (31) Research Analyst II (Economic/Resources)
- (32) Research Specialist II
- (33) Research Specialist III
- (34) Research Specialist IV
- (35) Senior Electrical Engineer
- (36) Senior Transportation Engineer
- (37) Senior Transportation Operations Supervisor, PUC
- (38) Senior Transportation Rate Expert
- (39) Senior Transportation Representative
- (40) Senior Utilities Engineer
- (41) Supervising Transportation Engineer, PUC
- (42) Supervising Transportation Rate Expert
- (43) Supervising Transportation Representative
- (44) Supervising Utilities Engineer, PUC
- (45) Supervisor, Operations and Safety Section, PUC

(c) Special Consultants

Section 8: "Designated employee" does not include:

- (a) Employees in the following civil service classes:
- (1) Accountant I
 - (2) Account Clerk II
 - (3) Accounting Technician
 - (4) Administrative Assistant I
 - (5) Administrative Service Officer II
 - (6) Assistant Clerk
 - (7) Assistant Engineering Specialist (Utilities)
 - (8) Assistant Statistician

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- (9) Assistant Transportation Engineer
- (10) Assistant Transportation Operations Supervisor, PUC
- (11) Assistant Utilities Engineer
- (12) Associate Data Processing Analyst
- (13) Associate Personnel Analyst
- (14) Associate Programmer Analyst
- (15) Associate Transportation Engineer
- (16) Associate Transportation Operations Supervisor, PUC
- (17) Associate Transportation Rate Expert
- (18) Associate Transportation Representative
- (19) Associate Utilities Engineer
- (20) Auditor I
- (21) Calculating Machine Operator - Key Division
- (22) Chief Hearing Reporter, PUC
- (23) Clerk I
- (24) Clerk II
- (25) Clerk Typist I
- (26) Clerk Typist II
- (27) Computer Operator
- (28) Customer Service Representative, PUC
- (29) Data Processing Technician
- (30) Data Processing Trainee
- (31) Delineator
- (32) Duplicating Machine Operator I
- (33) File Clerk II
- (34) Graduate Student Assistant
- (35) Hearing Reporter, PUC
- (36) Hearing Transcriber Typist, PUC
- (37) Junior Utilities Engineer
- (38) Key Data Operator
- (39) Key Data Supervisor I
- (40) Legal Assistant
- (41) Legal Secretary

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- (42) Legal Stenographer
- (43) Legal Typist
- (44) Machine Operator I
- (45) Material and Stores Supervisor I
- (46) Personnel Assistant Trainee
- (47) Personnel Manager II
- (48) Programmer
- (49) PU Financial Examiner II
- (50) PU Financial Examiner III
- (51) Research Analyst I
- (52) Research Analyst II (Economical/Financial)
- (53) Secretary I
- (54) Secretary II
- (55) Senior Account Clerk
- (56) Senior Clerk
- (57) Senior Clerk Typist
- (58) Senior Data Processing Analyst
- (59) Senior Delineator
- (60) Senior File Clerk
- (61) Senior Hearing Reporter, PUC
- (62) Senior Hearing Transcriber Typist, PUC
- (63) Senior Legal Stenographer
- (64) Senior Legal Typist
- (65) Senior Stenographer
- (66) Senior Machine Operator
- (67) Senior Programmer Analyst
- (68) Staff Data Processing Analyst
- (69) Staff Programmer Analyst
- (70) Staff Services Analyst
- (71) Stenographer
- (72) Stock Clerk
- (73) Student Assistant

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- (74) Student Assistant - Engineering and Architectural Sciences
- (75) Supervising Account Clerk
- (76) Supervising Calculating Machine Operator
- (77) Supervising Cashier Clerk I
- (78) Supervising Clerk I
- (79) Supervising Clerk II
- (80) Supervising Clerk Typist I
- (81) Supervising File Clerk I
- (82) Supervising Hearing Transcriber Typist, PUC
- (83) Supervising Legal Stenographer I
- (84) Supervising Stenographer I
- (85) Supervisor, EDP
- (86) Training Officer II
- (87) Transcriber
- (88) Transportation Analyst I
- (89) Transportation Analyst II
- (90) Transportation Analyst III
- (91) Volunteer Student Assistant
- (92) Warehouse Worker

(b) Employees in employment classes inadvertently omitted from Section 7(b) or Section 8(b), or which may be created after the adoption of this code, until such time as such employment classes are included in Section 7(b) by amendment of this code. ✓

(c) Employees included in employment classes set forth in Section 7 above, who are on terminal vacation or sick leave immediately prior to their retirement or termination of their employment in the service of this Commission and at the time this code becomes effective. ✓

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Section 9: "Employee" means any person employed by the Commission including civil service employees, civil service exempt employees and consultants.

Section 10: "Executive Director" means the Executive Director of the Commission.

Section 11: "Gift" means any payment to the extent that consideration of equal or greater value is not received. Any person, other than the defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The term "gift" does not include informational material, such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material". The term "gift" also does not include free admission, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service.

Section 12: "Immediate family" means the spouse and dependent children. Whenever disclosure of investments or interests in real property is required by this code, investments and interests in real property of members of the immediate family of which investments and interests in real property the designated employee has, or should have, knowledge shall also be disclosed.

Section 13: (a) "Income" means, except as provided in subsection (b), income of any nature from any person that has an interest in real property in the State of California, or does business in or plans to do business in the State of California or has done business in the State of California during the two years prior to the time any statement is required under this code or from any business entity that is a parent, subsidiary or otherwise related business entity. Income from such sources includes but is not limited to any salary, wage,

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advance, payment, dividend, interest, rent, capital gain, return of capital, gift (including any gift of food or beverage), loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to the members of the public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual owns, or spouse owns, a ten percent interest or greater and of which spouse's interest the designated employee has, or should have knowledge, directly or indirectly.

(b) "Income" does not include:

(1) Campaign contributions required to be reported under Chapter 4 of the Political Reform Act of 1974.

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, charitable, or employee organization.

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals.

(4) Free admissions, food, beverages, or similar nominal benefits provided to a person at the event at which he speaks or provides a similar service.

(5) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

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(6) Gifts and loans from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin, or the spouse of any such person; provided that a gift or loan from any such person shall be considered income if the donor or lender is acting as an agent or intermediary for any person not covered by this paragraph.

(7) Loans by commercial lending institutions in the regular course of business.

(8) Any devise or inheritance.

(9) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(10) Rents, royalties and other income from real estate located outside the State of California.

(11) Income, other than gifts, received from business entities or persons outside the jurisdiction of the State of California and not doing business within the jurisdiction of the State of California at any time during the two years prior to the time any statement or other action is required under this code.

(12) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government.

Section 14: "Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the State of California if the fair market value of the interest is greater than one thousand dollars (\$1,000). Interests in real property of an individual include a pro rata share of interests in real property of any business entity or trust in which the individual owns, or spouse owns, a ten percent

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interest or greater, directly, indirectly or beneficially, and of which spouse's interest the designated employee has, or should have knowledge.

Interest in real property does not include interest in real property located outside the State of California.

Section 15: "Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the State of California, or does business or plans to do business in the State of California, or has done business within the State of California during the two years prior to the time any statement is required under this code. No asset shall be deemed an investment unless its fair market value exceeds \$1,000. The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, or any bond issued or other debt instrument issued by any government or governmental agency. Investments of an individual includes a pro rata share of investments of any business entity or trust in which the individual owns, or spouse owns a ten percent interest or greater, directly, indirectly or beneficially, and of which spouse's interest the designated employee has, or should have, knowledge.

Section 16: "Period covered" by a statement required to be filed by this code means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement which has been filed and ending with the closing date of the statement in question. If the person filing the statement has not previously filed a statement, the period begins on the effective date of this code.

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Section 17: "Person" means any individual, partnership, firm, proprietorship, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. ✓

Section 18: "Statement", unless otherwise indicated, means a statement of reportable interests required by this code. ✓

Section 19: Unless a term is defined differently in this code, the definitions contained in Chapter 2 of the Political Reform Act of 1974, Government Code Section 82000 et seq., and regulations promulgated by the Fair Political Practices Commission, 2 California Administrative Code Section 18700 et seq., shall govern the construction of this code. ✓

Article 2

General Prohibitions

Section 20: No designated employee shall take Commission action, participate in taking Commission action, or in any way attempt to use his official position to influence Commission action, or the action of a Commissioner, in which he knows or has reason to know he has a financial interest.

Section 21: Section 20 does not prevent any employee from taking Commission action or participating in the taking of Commission action to the extent that his participation is legally required for the action taken.

A designated employee is legally required to take or participate in the taking of Commission action within the meaning of this section if pursuant to Sections 30(a), 30(b), or 30(c) of this code the supervisor of the designated employee or the Executive Director has determined it is in the public interest that such designated employee who has filed a conflict of interest statement with his supervisor be directed to take or participate in the taking of the Commission action in which he has a declared conflict of interest, when he is acting pursuant to Section 30(b) of this code before his supervisor has acted on his request for disqualification, or when he is acting pursuant to Section 22 of this code before being actually disqualified. ✓

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Section 22: Any person who has prior knowledge, or should have prior knowledge, of a conflict of interest situation which may disqualify an Examiner from participating as a hearing officer in a proceeding and who seeks to disqualify such Examiner from participating in a proceeding by reason of such conflict of interest must file the motion to disqualify the Examiner prior to the first day of hearing. A motion to disqualify an Examiner which is filed prior to the first day of hearing shall be referred to the presiding officer for decision. A motion to disqualify an Examiner which is filed after the hearing has commenced shall be referred to the Chief Examiner for decision, and the Examiner shall continue to participate as a hearing officer in the proceeding until he is actually disqualified.

Section 23: A designated employee has a financial interest in a Commission action within the meaning of this code if it is reasonably foreseeable that the Commission action will have a material financial effect, distinguishable from its effect on the public generally, on:

- (a) Any business entity in which the employee has a direct or indirect investment worth more than one thousand dollars (\$1,000);
- (b) Any real property in which the employee has a direct or indirect interest worth more than one thousand dollars (\$1,000);
- (c) Any source of income, other than loans by commercial lending institutions in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the employee within twelve months prior to the time when the Commission action is taken; or
- (d) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

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For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of any designated employee, of which investment or interest the designated employee has, or should have, knowledge, or any investment or interest owned by an agent on behalf of the designated employee, by any business entity controlled by the employee or by a trust in which the employee has a substantial interest. A business entity is controlled by a designated employee if the interests held by the designated employee, his agents, his spouse and dependent children of whose investments or interests the designated employee has, or should have, knowledge, constitute more than fifty percent of the ownership

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interest in the entity. A designated employee has a substantial interest in a trust when the value of the present or future interests in the trust held by the designated employee, his spouse and dependent children of whose interest he has, or should have, knowledge, exceeds one thousand dollars (\$1,000).

Section 24: An employee who has a financial interest which it is reasonably foreseeable may be materially affected by Commission action has an affirmative duty either to divest himself of the financial interest creating the conflict of interest within thirty days after he becomes aware of the conflict situation or to disqualify himself from taking or participating in the Commission action in which he has a conflict of interest.

Section 25: No conflict of interest situation arises because a designated employee who is participating in a rate proceeding is himself a member of a class of customers whose rates are in issue in the proceeding, or has a financial interest in a customer (e.g., a commercial or industrial concern) which is a member of a class of customers whose rates are involved in a Commission proceeding even though such customer has entered an appearance and actively participates in the proceeding.

Section 26: Because of Section 303 of the Public Utilities Code a designated employee who acquires ownership of stocks or bonds or a pecuniary interest in any business entity that is subject in whole or in part to regulation by this Commission or in any holding company or conglomerate which has a controlling interest in any business entity that is subject in whole or in part to regulation by this Commission shall divest himself of such ownership or interest within a reasonable time after he becomes aware or should have knowledge that the business entity is subject in whole or in part to regulation by this Commission or that the holding company or conglomerate has a controlling interest in a business entity which is subject in whole or in part to regulation by this Commission.

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Section 27: No conflict of interest situation arises because a designated employee owns stocks or bonds or has a pecuniary interest in a mutual fund (including investment trust, investment company and limited partnership exchange fund), an insurance company, a bank or other financial institution which has investments in or has made loans to a business entity which is subject in whole or in part to regulation by this Commission, until such time as the designated employee has knowledge that a contract between such a mutual fund (including investment company, investment trust and limited partnership exchange fund), insurance company, bank or other financial institution and a business entity subject in whole or in part to regulation by this Commission has become an issue in a matter involving Commission action in which such designated employee is participating.

The provisions of this section shall not apply to a designated employee who owns or whose spouse owns, directly, indirectly or beneficially, and of which spouse's interest the designated employee has, or should have, knowledge, a ten percent interest or greater in such a mutual fund, insurance company, bank or other financial institution.

Section 28: No conflict of interest situation arises because a designated employee owns stocks or bonds or has a pecuniary interest in a business entity of the type regulated by this Commission but not doing business in California and not subject to regulation by this Commission.

Section 29: A designated employee may remove a conflict of interest situation and thereby make it unnecessary for him to disqualify himself:

(a) By filing with the Executive Director a Conflict of Interest Statement and Statement of Intention to Divest under the Conflict of Interest Code on the form shown in Appendix A attached hereto promptly upon his becoming aware that a conflict of interest situation has arisen; and

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(b) By filing with the Executive Director a Statement of Actual Divestment to Remove Conflict of Interest under the Conflict of Interest Code on the form shown in Appendix B attached hereto within thirty days after the corresponding Conflict of Interest Statement and Statement of Intention to Divest under the Conflict of Interest Code was filed with the Executive Director.

The filing of such statements and the divestment pursuant thereto shall render the designated employee immune from any disciplinary action that could otherwise be initiated by the Commission by reason of the conflict of interest and shall relieve the designated employee from any claim or action under the Political Reform Act of 1974 by reason of the conflict of interest which was thereby removed.

Section 30: (a) When a designated employee ascertains that a conflict of interest situation has arisen prior to hearing with respect to an assignment and he does not desire to remove the conflict of interest pursuant to the provisions of Section 29 above, he shall cease all work on and take no further action in connection with such assignment, and he shall promptly file with his supervisor a Conflict of Interest and Disqualification Statement under the Conflict of Interest Code of the Public Utilities Commission in the form shown in Appendix C, attached hereto. If the supervisor accepts the disqualification of the designated employee and refers the assignment to another employee nothing further need be done by the designated employee under this section. If the supervisor rejects the disqualification the designated employee shall comply with the supervisor's direction to resume working on the assignment or to continue working on the assignment, until he is notified by the Executive Director that the direction of the supervisor has been countermanded and he has been disqualified from taking further action on the assignment by the Executive Director.

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(b) When a designated employee ascertains that a conflict of interest situation has arisen during the course of a hearing and the designated employee does not wish to remove the conflict of interest pursuant to the provisions of Section 29 above, he shall promptly file with his supervisor a Conflict of Interest and Disqualification Statement under the Conflict of Interest Code of the Public Utilities Commission in the form shown in Appendix C attached hereto, but he shall nevertheless continue working and taking action on his assignment until such time as the supervisor accepts the disqualification of the designated employee and refers the assignment to another employee, or if the supervisor has rejected the disqualification, until such time as the Executive Director has notified the designated employee that the direction of the supervisor for him to continue working and taking action on the assignment has been countermanded and he has been disqualified from taking further action on the assignment by the Executive Director.

(c) Whenever a supervisor of a designated employee who has filed a conflict of interest and disqualification statement with his supervisor has rejected the disqualification and has directed the designated employee to resume or continue working and taking action on an assignment despite his declared conflict of interest, the Executive Director may countermand the direction of the supervisor by notifying in writing both the supervisor and the designated employee of his decision to countermand the direction of the supervisor.

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(d) If a designated employee is required by Section 22, Section 30(b), or by his supervisor to resume or to continue working and taking action on an assignment despite a declared conflict of interest and pursuant to such sections or to such direction the designated employee resumes or continues to work and to take action on such assignment, he shall be immune from any disciplinary action that could otherwise be initiated by the Commission by reason of such conflict of interest, and both he and his supervisor shall be relieved of any claim or action under the Political Reform Act of 1974 by reason of the designated employee's resuming or continuing to work and take action on the assignment despite his declared conflict of interest. This immunity and relief from claim or action under the Political Reform Act of 1974, of course, will not apply to any action taken by the designated employee subsequent to the time he is notified by the Executive Director that the Executive Director has disqualified the designated employee from taking further action on the assignment involved with the conflict of interest.

(e) The designated employee and the supervisor shall each retain a copy of all statements filed pursuant to the provisions of this section. Three copies of such statements shall be filed with the Executive Director who shall retain one copy in his public files in San Francisco and one copy in his public files in Los Angeles and send the original to the Fair Political Practices Commission in Sacramento. The Executive Director shall file copies of any directives issued by the Executive Director pursuant to this section at the offices of the Commission in San Francisco and Los Angeles and with the Fair Political Practices Commission in Sacramento. ✓

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(f) Notwithstanding the other provisions of this Section 30, a Conflict of Interest and Disqualification Statement of a member of the Commission, the Executive Director, or the General Counsel shall be final and not subject to review.

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Article 3

Reporting of Financial Interests

Section 31: Every designated employee, other than a member of the Commission, shall file, in a manner prescribed by this article, statements disclosing all reportable interests, as defined in Sections 32-36, held by the designated employee.

Section 32: A reportable interest for the Executive Director, the General Counsel, and an Advisor to a Commissioner, a consultant, and any other designated employee who reports directly to a Commissioner or to the Commission and is not employed in a particular division of the Commission staff, includes any investment, interest in real property, and income within the State of California, subject, of course, to the limitations provided in the definitions of the terms "investment", "interest in real property", and "income" set forth in this code. ✓

Section 33: For designated employees in the Transportation Division of the Commission, a reportable interest is any investment in, or income from, a business entity which is either:

(a) A railroad corporation, airline common carrier, pipeline corporation, passenger stage corporation, highway carrier of property, vessel operator, warehouseman, freight forwarder, express corporation, charter-party carrier of passengers subject to the jurisdiction of the Commission; or

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(b) A business entity that contracts with a business entity described in subdivision (a) to such an extent that Commission action taken in the regular exercise of the Commission's jurisdiction over a business entity described in subdivision (a) could foreseeably have a material financial effect on the contracting business entity.

Section 34: For designated employees in the Utilities Division, and in the Energy Conservation Team of the Commission a reportable interest is:

(a) Any investment in or income from a business entity which is either:

(1) A gas corporation, electric corporation, telephone corporation, water corporation, heat corporation or sewer corporation subject to the jurisdiction of the Commission, or

(2) A business entity that contracts with a business entity described in subdivision (a)(1) to such an extent that Commission action taken in the regular exercise of the Commission's jurisdiction over a business entity described in subdivision (a)(1) could foreseeably have a material financial effect on the contracting business entity.

(b) Any interest in real property if:

(1) The real property is located within the service area or proposed service area of a business entity described in subdivision (a)(1), and

(2) Commission action could foreseeably have a material financial effect on the interest in real property.

Section 35: For the Commission Representative, Southern California, Data Processing Manager II, Information Officers I and II, and designated employees in the Legal Division, other than the General Counsel, in the Finance and Accounts Division, and in the Examiner's Division, a reportable interest in any interest defined as a reportable interest in Sections 33 or 34.

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Section 36: A reportable interest for the Accounting Officer II, the Administrative Service Officer III, CEA, the Chief of the Administrative Services Division, and the Fiscal Officer I is any investment in or income from a business entity which contracts with the Commission to provide goods, services, or materials to the Commission or with the State of California to provide goods, services, or materials for use by the Commission to such an extent that such contract or contracts could foreseeably have a material financial effect on the contracting business entity.

Section 37: Designated employees employed by the Commission at the time of the effective date of this code shall file statements on forms provided by the Executive Director within thirty days after the effective date of this code. The statements shall disclose all reportable investments and interests in real property held by the designated employee on the effective date of this code. Subsequent statements shall be filed by the designated employees annually thereafter on forms provided by the Executive Director. Such subsequent statements shall disclose the reportable investments and interests in real property held at any time during the reporting period together with the dates on which any such investments or interests in real property were acquired or disposed of during the reporting period and any reportable income received during the reporting period. The annual date for filing these subsequent statements shall be within thirty days after the end of the twelve calendar month period following the date as of which the previous statements were to have been filed within thirty days thereafter.

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Section 38: New designated employees shall file as of the first day of the first calendar month after assuming office within thirty days after the first day of such calendar month statements disclosing reportable investments and interests in real property. Subsequent statements shall be filed in the same manner as prescribed in Section 37. The Personnel Officer of the Commission shall furnish a copy of this code to each new designated employee on the date he accepts employment as a designated employee with the Commission and shall advise such new designated employee of his legal obligation to file such statements.

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Section 39: Designated employees leaving a position specified in Section 7 shall, within 30 days after leaving such position, file a statement disclosing all reportable interests held by them during the period between the date of the last statement required by Section 37 and the date of leaving such position. This section shall not apply to designated employees who leave a position specified in Section 7 in order to immediately assume employment with the Commission in another position specified in Section 7 for which the definition of reportable interest, provided for in Sections 32-36, is the same.

Section 40: When an investment or an interest in real property is required to be disclosed under this Article, the statement shall contain:

- (a) A statement of the nature of the investment or interest;
- (b) The name of the business entity in which each investment is held and a general description of the business activity in which the business entity is engaged;
- (c) The address or other precise location of the real property;
- (d) A statement whether the fair market value exceeds ten thousand dollars (\$10,000) and whether it exceeds one hundred thousand dollars (\$100,000);
- (e) In the case of an investment which constitutes fifty percent or more of the ownership interest in any business entity, disclosure of the investments and interests in real property of the business entity; and
- (f) If the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

For purposes of this Article, an interest in real property does not include the principal place of residence of the designated employee.

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Section 41: (a) When income is required to be reported under this Article, the statement shall contain, except as provided in subsection (b):

(1) The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value during the reporting period, or twenty-five dollars (\$25) or more in value during the reporting period if the income was a gift, and a general description of the business activity, if any, of each source;

(2) A statement whether the aggregate value of income from each source was greater than one thousand dollars (\$1,000) during the reporting period and whether it was greater than ten thousand dollars (\$10,000) during the reporting period;

(3) A description of the consideration, if any, for which the income was received; and

(4) In the case of a gift, the amount and the date on which the gift was received.

(b) When income of a business entity, including income of a sole proprietorship, is required to be reported under this Article, the statement shall contain:

(1) The name, address and a general description of the business activity of the business entity;

(2) In the case of a business entity which provides legal or brokerage services, the name of every person who paid fees to the business entity if the employee's pro rata share of fees from such person was equal to or greater than one thousand dollars (\$1,000) during the reporting period; and

(3) In the case of a business entity not covered by subsection (2), the name of every person from whom the business entity received payments if the employee's pro rata share of the gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000) during the reporting period.

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Section 42: If a designated employee has no interests to declare, he shall write "none" on the schedules furnished by the Executive Director. Blank schedules are not acceptable.

Section 43: All statements required by this Article shall be filed with the Executive Director on forms provided by the Executive Director. The Executive Director shall make and retain one copy in his files in the San Francisco office of the Commission and one copy in his files in the Los Angeles office of the Commission and forward the original to the Fair Political Practices Commission in Sacramento.

Article 4

Interpretation of the Code

Section 44: Any designated employee may request the Executive Director to issue an opinion with respect to his duties under this code. The Executive Director shall, within fourteen days, either issue an opinion or advise the person who made the request whether the opinion will be issued. Copies of such opinions shall be delivered to the designated employee requesting the opinion and to the Fair Political Practices Commission in Sacramento and shall be maintained in the files of the Commission for public inspection at its San Francisco office and its Los Angeles office.

No person who acts in good faith on an opinion issued to him by the Executive Director shall be subject to criminal or civil penalties for so acting, provided that the material facts are stated in the opinion request.

Opinions issued by the Executive Director may be modified or revised by the Executive Director or by the Fair Political Practices Commission but such modifications or revisions shall be prospective in effect and only after notification has been given to the designated employee who requested the opinion.

APPENDIX A

Article 5
Enforcement

Section 45: Any designated employee other than a member of the Commission who violates any provision of this code is subject to discipline by the Commission, including dismissal, subject to the provisions of Section 19570 et seq. of the Government Code.

Section 46: Any designated employee who realizes an economic benefit as a result of a violation of Article 2 of the code is liable pursuant to Section 91005(b) of the Political Reform Act of 1974 in a civil proceeding brought by the Fair Political Practices Commission or by a person residing in the State of California for an amount up to three times the value of the designated employee's benefit.

Section 47: Sections 45 and 46 do not preclude criminal action against a designated employee who violates this code, pursuant to Chapter 11 of the Political Reform Act of 1974.

Section 48: Nothing in this code shall exempt a designated employee from compliance with the applicable provisions of any statute including, but not limited to, Section 303 of the Public Utilities Code or the Commission's Statement of Incompatibility promulgated pursuant to Section 19251 of the Government Code.

Section 49: Where a claim or action is filed under the Political Reform Act of 1974 against a designated employee and said designated employee has complied with the provisions of this code and has been acting within the scope of his employment the Commission shall undertake the designated employee's defense under the provisions of Part 7 (commencing at Section 995 et seq.) of the Government Code.

The Commission's liability for any subsequent judgment or any payment pursuant to any compromise or settlement on such claim or action shall be governed by the provisions of Government Code Section 825.

APPENDIX A

Article 6
Effective Date

Section 50: This code shall be effective no sooner than the first day of the fourth calendar month following the date of the receipt by the Executive Director of written notice that the code has been approved by the Fair Political Practices Commission. Upon receipt of such written notice such actual effective date shall be inserted in this section in lieu of this provision as the effective date of the code finally adopted by the Commission.

APPENDIX A TO CONFLICT OF INTEREST CODE

Conflict of Interest Statement and
Statement of Intention to Divest
Under the Conflict of Interest Code
Of the Public Utilities Commission

I, the undersigned, a designated employee as defined in Section 7 of the Conflict of Interest Code of the Public Utilities Commission, have a financial interest in the following named business entity:

The nature and value of such financial interest are as follows:

In the ordinary course of my duties, I shall be participating in the following action or decision affecting such business entity:

In order to remove the conflict of interest and make it unnecessary for me to disqualify myself from this assignment I hereby declare that within thirty days from the date of this statement I shall sell or otherwise dispose of my financial interest in the above named entity.

Date

(Signature of designated employee)

The above statement was filed with the Executive Director
on _____

(Signature of Executive Director)

Note: The original and two copies of this statement are to be filed with the Executive Director of the Public Utilities Commission and one copy is to be retained by the designated employee.

APPENDIX B TO CONFLICT OF INTEREST CODE

Statement of Actual Divestment
To Remove Conflict of Interest
Under Conflict of Interest Code
Of the Public Utilities Commission

I, the undersigned, a designated employee as defined in Section 7 of the Conflict of Interest Code of the Public Utilities Commission, on _____ (date) filed a statement of intention to divest myself of all financial interest in _____ (entity) and hereby declare under penalty of perjury that on _____ (date), I actually did sell or otherwise dispose of such financial interest in order to remove the conflict of interest occasioned by my ownership of such financial interest.

Date

(Signature of designated employee)

The above statement was filed with the Executive Director
on _____

(Signature of Executive Director)

Note: The original and two copies of this statement are to be filed with the Executive Director of the Public Utilities Commission and one copy is to be retained by the designated employee.

APPENDIX C TO CONFLICT OF INTEREST CODE

Page 1 of 4

Conflict of Interest and Disqualification
Statement under the Conflict of Interest
Code of the Public Utilities Commission

I, the undersigned, a designated employee as defined in Section 7 of the Conflict of Interest Code of the Public Utilities Commission, have a financial interest in the following named business entity:

The nature and value of such financial interest are as follows:

In the ordinary course of my duties, I shall be participating in the following action or decision affecting such business entity:

For the above reasons, I disqualify myself from this assignment and request that it be reassigned to another employee.

Date

(Signature of Designated Employee)

Date received
by Supervisor

(Signature of Supervisor)

(Title of Supervisor)

APPENDIX C TO CONFLICT OF INTEREST CODE
Page 2 of 4

Statement of Action
By Supervisor on
Disqualification Statement

I have reviewed the above declaration. Your disqualification is accepted, and the above assignment has been referred to _____. You are directed to take no further action on the above assignment because of your declared conflict of interest.

Date

(Signature of Supervisor)

(Title of Supervisor)

Date Designated Employee
received a copy
of this direction

(Signature of Designated Employee)

I have reviewed the above declaration and your disqualification is rejected for the following reasons:

You are hereby directed to continue or resume working on the above assignment despite your declared conflict of interest until you have been notified by the Executive Director that this direction has been reversed and you have been disqualified from taking further action on the above assignment by the Executive Director.

APPENDIX C TO CONFLICT OF INTEREST CODE
Page 3 of 4

You will be notified if the Executive Director confirms this direction to you to continue working on the above assignment despite your declared conflict of interest.

The Conflict of Interest Code of the Public Utilities Commission provides that where you have filed a Conflict of Interest and Disqualification Statement and have been notified by your supervisor that the public interest requires you to continue working and taking action on the assignment involved in such statement despite your declared conflict of interest and pursuant to such notice you continue your work and take action on such assignment you shall be immune from any disciplinary action that could otherwise be initiated by the Commission by reason of your conflict of interest and you shall be relieved of any claim or action under the Political Reform Act of 1974 by reason of such conflict of interest. This immunity and relief from claim or action under the Political Reform Act of 1974, of course, will not apply to any action taken by you subsequent to the time you are notified by the Executive Director that he has disqualified you from taking further action on the above assignment.

Date

(Signature of Supervisor)

(Title of Supervisor)

Date Designated Employee
received a copy
of this direction

(Signature of Designated Employee)

APPENDIX C TO CONFLICT OF INTEREST CODE
Page 4 of 4

The foregoing conflict of interest statement and disqualification statement together with the statement of action by the supervisor on the disqualification statement were filed with the Executive Director on _____.

(Signature of Executive Director)

Note: The original and two copies of these statements are to be filed with the Executive Director of the Public Utilities Commission, one copy is to be retained by the designated employee, and one copy is to be retained by the supervisor of the designated employee.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Investigation)
on the Commission's own motion)
for the purpose of adopting)
a Conflict of Interest Code)
to govern the conduct of the)
Commission and its employees.)

Case No. 10084

STAFF'S PROPOSED AMENDMENTS TO
PROPOSED CONFLICT OF INTEREST CODE

The staff, having received numerous comments from employees and employee organizations, offers the following amendments to the proposed Conflict of Interest Code, Appendix A to the Order Instituting Investigation in this matter:

1. Section 2(e) - Add the word "Designated" before "Employee" at the beginning of Section 2(e).
2. Section 2(e)(2) - Delete portion of sentence following the word "Commission".
3. Section 2(e)(3) - Add to list:
 - Account Clerk
 - Account Clerk II
 - Accounting Technician
 - Senior Account Clerk
 - Senior File Clerk *W & C*
4. Add new Section 2(f) - "Employee means the members of the California Public Utilities Commission and any person employed by the Commission, including Civil Service employees, Civil Service exempt employees, and consultants."
5. Renumber remaining subdivisions of Section 2.

C 10084
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Counsel MacBride
sd. 5/24/76 Rec 5/24/76
W & C

6. Section 2(h)(2)b. - Delete and substitute "Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, charitable or employee organization".
7. Add the phrase "of which the individual has, or should have, knowledge":
 - a. After the words "spouse owns" in Section 2(h)(1).
 - b. After the words "members of the immediate family" in Section 2(i).
 - c. After the words "spouse owns" in Section 2(j).
 - d. After the words "spouse owns" in Section 2(k).
8. Section 2(k) - Delete the comma following the words "other debt instrument".
9. Section 5 - Delete the final paragraph and substitute;
"For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of any employee, of which the employee has, or should have, knowledge, or any investment or interest owned by an agent on behalf of the employee or by any business entity controlled by the employee or by a trust in which the employee has a substantial interest. A business entity is controlled by an employee if the inter-ests held by the employee, his agents, his spouse and dependent children, of which he has, or should have, knowledge, constitute more than 50 percent

APPENDIX B
Page 3 of 5

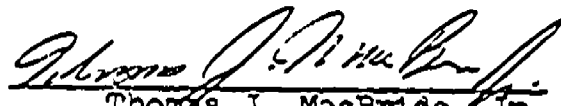
of the ownership interest in the entity. An employee has a substantial interest in a trust when the value of the present or future interests in the trust held by the employee, his spouse and dependent children, of which he has, or should have, knowledge, exceeds one thousand dollars (\$1,000)."

10. Wherever the word "employee" or "employees" appears in Title III, delete and substitute the words "designated employee" or "designated employees".
11. Section 8(b) - change "affect" to "effect".
12. Section 9 - add the phrase "and the Energy Conservation Team" after the words "Utilities Division".
13. Section 11 - add the phrase "Commission Representative, Southern California" after the words "Fiscal Officer".
14. Section 12 - add the sentence: "The term 'consultant to the Commission' includes only those individuals who report directly to the Commission or to a Commissioner and are not employed in a particular division of the Commission Staff."
15. Section 13 - add the sentence: "Designated employees who hold no reportable interests shall file statements indicating that fact".
16. Section 16 - add Subdivision (f) to read: "For purposes of this Title, an interest in real property does not include the principal place of residence of the designated employee."

bp

17. Section 20 - delete the phrase, "three times the benefit" and substitute, "three times his benefit".
18. Add Section 22 to read: "Nothing in this Code shall exempt an employee from compliance with the applicable provisions of any statute including, but not limited to, Section 303 of the Public Utilities Code."

Dated at San Francisco, California, this 24th day of May, 1976.


Thomas J. MacBride Jr.
Staff Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own Motion for the Purpose of
Adopting a Conflict of Interest
Code to Govern the Conduct of the
Commission and its employees.


Case No. 10084

AMENDMENT TO EXHIBIT ONE

1. Paragraph 3. Add to list: Customer Service
Representative, PUC

2. Paragraph 18. After the words "Public Utilities Code",
add the words, "or the Commission's Statement of Incompatibility
promulgated pursuant to Section 19251 of the Government Code."

Dated at San Francisco, California, this 27th day of May, 1976.


Thomas J. MacBride, Jr.
Staff Counsel

C.10084
TH
Counsel MacBride
Rec. 572876.
W & C

CONCURRING AND DISSENTING OPINION OF
COMMISSIONERS ROBERT BATINOVICH AND LEONARD ROSS:

We disagree with the statement on page 21 that ownership by Commissioners or key employees of stock in out-of-state utilities should not be subject to regulation by this Commission. We believe that the Commission should, either as part of the Conflict of Interest Code or as part of its own internal standards, provide for at least disclosure of significant investments of that type.



Robert Batinovich
President



Leonard Ross
Commissioner

San Francisco, California

January 5, 1977