



March 16, 2009

Assembly Speaker Karen Bass
State Capitol Building, Room 219
Sacramento, CA, 95814
Also via facsimile: 916 445-4633

Dear Madame Speaker,

We write to draw your attention to a conflict of interest at the California Energy Commission (CEC) that directly impacted the conclusion of a study ("Fuel Temperature Delivery Study,") ordered by AB 868 (Davis), which was enacted in 2007. The AB 868 study was completed last week, over objections of consumer advocates, and has been submitted to Assemblyman Davis with recommendations that strongly favor the oil industry's position and work against fairness and transparency for consumers. We ask that, in light of a disturbing conflict on the part of CEC Commissioner James Boyd, who led the study, you disregard the study's findings and recommendations and act on behalf of California consumers.

Consumer Watchdog's complaint (linked below) to the California Fair Political Practices Commission describes Mr. Boyd's inherent conflict in detail. Underlying documents are included in the attachment.

In summary, Commissioner Boyd's spouse, Catherine Reheis-Boyd, is a top executive of and registered lobbyist for the Western States Petroleum Association (WSPA). The association's members include all of the major integrated oil companies and/or their refining arms in California, and its members hire, fire and determine the salaries of the top two executives, including Mrs. Boyd.

Commissioner Boyd recently declined to recuse himself from leading the AB 868-mandated study, on the costs and benefits of requiring automatic adjustment at the gas pump for variations in fuel temperature.

Fuel temperature variations are acknowledged to cost California consumers about \$400 million a year. It is understood that the CEC study, depending upon its findings, and any ensuing legislation could have a substantial economic effect on oil refiners, including those of the integrated companies.

The integrated oil companies and independent refiners that comprise WSPA actively sought to stop the CEC study from recommending temperature compensation at retail. With Mr. Boyd's intervention, as described in documents obtained by Consumer Watchdog under the Public Records Act, they succeeded. As you will see in the letter to the FPPC, Mr. Boyd successfully

demanded changes to the findings drafted by the Energy Commission's staff experts, leading to a radically different set of conclusions about the problem of "hot fuel."

Gasoline expands as it warms (thus, "hot fuel"), offering less energy when dispensed only by a measured gallon. This causes harm to California motorists because:

- The lack of temperature adjustment (which is used in Canada and increasingly in Europe) is fundamentally unfair and forces motorists to pay for a gallon of gas while getting less than a gallon's worth of energy when the fuel is warmer than 60 degrees;
- Motorists do not know the temperature of the fuel at any gas station, and cannot accurately compare prices from station to station. That is, \$2.15/gallon could be a better deal than \$2.13/gallon if the "cheaper" gas is sold at a higher temperature; and
- The average temperature of gasoline sold in California is more than 10 degrees above the federal "reference temperature" of 60 degrees.

This is not a trivial matter. It is a deception in the method of sale that provides retailers with extra gallonage to sell, untaxed by the state and at a pure profit. The state as well as consumers lose. Yet when the CEC staff proposed findings that reform could benefit the public, Commissioner Boyd intervened and ordered the call for reform removed from the study.

Mr. Boyd's documented financial interest in his spouse's substantial salary is cause for his recusal in any matter financially affecting the petroleum industry members of WSPA. Though Mr. Boyd received one advice from the FPPC that he should recuse himself from the hot fuel study, the CEC general counsel later sought and received a different decision on very narrow grounds. Mr. Boyd's unwillingness to step aside and relieve the public of even an appearance of conflict was wrong and indicates that his industry advocacy will cast a lingering cloud over the study.

Given Mr. Boyd's actions that favored the oil industry in the CEC study, we ask that you regard the study as the product of an ethically conflicted relationship. We also ask that you require any legislation on fuel temperature to ultimately require the temperature adjustments that would make every gallon of gasoline sold in California equal in energy content to every other gallon. This is the only outcome that puts consumers on an equal footing with the rest of the oil and fuel industries, which adjust for fuel temperature in all internal and wholesale dealings.

Sincerely,


Judy Dugan
Research Director


Douglas Heller
Executive Director

Cc: Asm. Mike Davis
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FPPC complaint letter:

<http://www.ConsumerWatchdog.org/resources/HotFuelFPPCLetter3-13-09.pdf>