



March 13, 2009

Mr. Ross Johnson, Chairman  
Fair Political Practices Commission  
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Fair Political Practices Commission  
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Dear Mr. Johnson,

We write to file a formal complaint concerning a deep and disturbing conflict of interest at the California Energy Commission (CEC) that has harmed the integrity of that body and cheated California motorists of fairness in the sale of motor fuel.

Last week, the Fair Political Practices Commission advised the CEC that Commissioner James Boyd does not suffer a conflict of interest that would prevent him from involvement in the CEC's report on the costs and benefits of allowing or requiring automatic temperature compensation of motor fuel. We believe that new facts have arisen, which were not provided to you, that indicate not just a conflict of interest involving Mr. Boyd, whose wife is an executive and long-time lobbyist for the Western States Petroleum Association, but active interference with the work of CEC staff in order to benefit his wife's ultimate paymaster, the oil companies.

Consumer Watchdog on Feb. 9 had asked Mr. Boyd to recuse himself from the legislatively mandated proceeding because his spouse, Catherine Reheis-Boyd, is a vice president and registered lobbyist for the Western States Petroleum Association. As required, Mr. Boyd reports substantial spousal income from WSPA.

As the 2006 Form 990 submitted to the IRS by WSPA indicates, Commissioner Boyd's wife, Catherine Reheis-Boyd, is an officer of the WSPA corporation. Her income is likely set by the Board, or at least directly by Joe Sparano, who is an Ex Officio member of the Board. The Board is virtually entirely constituted of oil company executives and oil companies provide 94% of the revenue to WSPA. Irrespective of the question of whether or not Ms. Boyd actively lobbied her husband as a WSPA lobbyist, the fact that her income is subject to the will of the oil companies who run her organization and pay her salary creates an irreconcilable conflict each and every time Mr. Boyd engages on issues in which oil companies have a direct stake.

Several of WSPA's largest members, including Chevron Corp., Valero, ConocoPhillip and BP, were active in opposition to temperature compensation during the CEC proceedings. Chevron

and Valero, California's largest oil refiners, retained legal and economic advisers to influence the report.

Subsequent to Consumer Watchdog's request for his recusal, Mr. Boyd apparently sought the counsel of the FPPC on his own. As a faxed Feb. 17 memo to the FPPC's Chief Counsel Scott Halabrin from CEC general counsel William M. Chamberlain states: "I am advised ... that one of your staff (Barbara) has suggested he should recuse himself because members of WSPA could be affected."

Mr. Chamberlain, in the same Feb. 17 memo, asks Mr. Halabrin to find that Mr. Boyd is *not* conflicted. The memo acknowledges that members of WSPA could be financially affected by the outcome of the CEC report, but argues that since WSPA itself would not suffer economic harm from an undesired outcome, Mr. Boyd suffers no conflict from his spouse's employment.

The Chamberlain memo states:

There is no question that the commissioner has a financial interest in WSPA, consisting of his community property interest in his wife's salary. However, I have advised him that it is not reasonably foreseeable that there would be a material financial effect on WSPA resulting from anything the report to the Legislature might say. WSPA does exist based on dues paid by its members which include oil companies, and some of those oil companies could foreseeably be affected by legislation that might or might not be enacted based, in part, on the advice in this report. But my commissioner does not have an interest in any of these companies. Nor is it reasonably foreseeable that his wife's salary or WSPA's budget would change as a result of the Energy Commission's report. While the potential legislation action here might have a material financial effect on one or more of WSPA's members, it is extremely unlikely to cause them to stop funding their trade association. I am advised, however, that one of your staff (Barbara) has suggested that he should recuse himself because members of WSPA could be affected.

A return e-mail memo from Mr. Halabrin, dated March 4, accepts this line of reasoning. It states in its conclusion:

"It is not reasonably foreseeable that the [CEC] decision will have any financial effect on the trade association, which is a source of income to the commissioner. In addition, because the members of the trade association who may be affected by the decision do not control the trade organization's decisions, the commissioner does not have an economic interest in these members."

Consumer Watchdog regards this narrow line of reasoning as wholly in error:

1. The trade association is no more than the sum of its members, by definition. WSPA's rotating board of directors is composed wholly of members (unlike a manufacturing or services corporation), giving the association members ultimate control over the association's decisions and actions. The association exists only to serve the aggregate purposes of its members, and has no independent mission beyond that.

2. The effect on WSPA's largest refiner members of selling fuel adjusted for temperature would be substantial. First, companies including Chevron, Conoco, Valero, ExxonMobil and BP that own and operate stations would be directly affected by selling gallons with equal energy at all temperatures, effectively reducing the overall number of gallons they sell in California. Companies' owned-and-operated stations are a small percentage of stations, but tend to be the largest and highest-volume. Second, non-company stations would pressure their branded suppliers — the companies financially supporting WSPA -- to adjust their pricing to keep the stations competitive. Retail stations currently buy temperature-adjusted gasoline and sell non-temperature adjusted gasoline. Stations would no longer acquire what amounts to free gallons to make up for their small profit margin over wholesale cost. It's widely acknowledged that retailers buy their gasoline at prices close to the wholesale per gallon prices because they can sell more gallons than they pay for because of the lack of temperature adjustment at the pump. Temperature adjustment is far from just a retailer issue, as the largest WSPA members' involvement shows.
3. The WSPA board of directors, comprised entirely of members, has power over the decision-making executives of the association, including the power to discipline, hire and fire them. The issue is not direct harm to the finances of WSPA, but the fact that executives at the level of Mrs. Boyd serve at the pleasure of the members.

Mrs. Boyd does not directly lobby the California Energy Commission, which would be an egregiously open conflict of interest. WSPA has also not directly lobbied on or participated in the CEC fuel temperature proceedings. But that does not remove a conflict in this case, because Mrs. Boyd and President Joe Sparano are the Association's top two executives. Unlike with a public corporation, they serve the members, not the association itself. A decision on conflict of interest cannot be made on an industrial model.

When an issue before the CEC has the potential to substantially affect the largest of WSPA's members (who pay the largest dues and have the largest voice), Mr. Boyd's interest in his spouse's salary and her continued employment point to a substantial conflict of interest.

For instance, the series of e-mails on page 8, PDF 1 of the documents obtained March 9 by Consumer Watchdog in a public records act request show Mr. Boyd actively changing the study's conclusions even before publication of the first staff report Nov. 28, thus leading to a less transparent government process. The changes he is demanding from staff (Jim Page and Mike Smith) also turn a consumer-friendly conclusion into an industry-friendly conclusion (boldface added):

»> Mike Smith 11/26/2008

4:40 PM >>>

Jim/Karen'

Attached is a copy of the report that I am sending to Bob Aldrich to post this evening.

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Please note that we adjusted the Executive. Summary and the body of the report to address Jim's concerns. The Executive Summary now reflects all options (Le., mandatory ATC, permissive ATC and mandatory reference temperature change). **The question and answer regarding the willingness of consumers to pay the added expense has been deleted from the Executive Summary .and the body of the report.**

Also, regarding process, this document will be posted as a "Staff Report." Following the committee workshop, the report will be revised as needed and labeled as a "Committee Report" that will then be taken to the full commission for approval. This is in keeping with our normal process. We are not planning a second committee:

Please let me know if you have any questions,  
Mike.

»>Jim Boyd 11/26/2008 3:46 PM >>>

Claudia/Mike -- Good: news, it's labeled a draft stqff report; Bad news, the Executive Summary is totally slanted to one conclusion but there's no way to fix now BUT the last bullet question on page 3 and the response thereto on page 4 HAVE GOT TO GO. **You cannot speak for the consuming public in a way that leaves no other conclusion than go with ATC, it's so cheap....** without us hearing testimony and a record being developed to support that conclusion.

>>> Jim Page 11/26/2008 1:04 PM >>

Edited report attached. \_Changes discussed this morning are highlighted in yellow on pp. 3, 4, & 88-90. Permissive ATC is now a new chapter. We have also **eliminated the final conclusion' (including similar language in the Abstract)**, and all references that we could find that characterize costs as "insignificant", "extremely small", etc.

Even *before* the issuance of the initial report by professional staff, the appointed commissioner(s) are demanding substantial industry-friendly changes. Mr. Boyd, who had not been present at a year's worth of meetings, asserts above that there is no record of consumer preferences, despite a written and spoken record by Consumer Watchdog, independent truckers and Public Citizen. The Nov. 26 changes also mean there is no public record of the original report by the professional staff, aside from the fragmentary echoes contained in the Public Records Act documents (see below).

The PRA documents also show that Mr. Boyd attended meetings as early as August with oil industry representatives including a Valero executive and an industry-connected economist. Mr. Boyd's substantial spousal income is derived from the people with whom he is meeting, and whose analyses he is favoring, to the detriment of ordinary consumers.

The issue here is not Mr. Boyd's history as an environmentalist, which was brought up in the March 11 meeting by the other commissioners who spoke in anger and offense about Consumer Watchdog's conflict of interest letter. Fuel temperature is a pure consumer fairness issue, involving an unfair and opaque method of sale that benefits the oil industry from retail up through the refiner level. The appearance of conflict for Mr. Boyd is real and his aggressive pro-oil leadership on this issue is evidence of the conflict in action.

The FPPC has in the past few years been admirably vigilant in protecting voter interests in fairness and transparency. You have expansively interpreted some regulations and changed others to serve the honesty and openness of government. We hope that, in service of those goals, you will review this matter and recognize the economic conflict inherent in his spouse's employment when his public duty requires him to address matters directly connected to oil industry income.

Sincerely,



Judy Dugan  
Research director

Douglas Heller  
Executive Director

Electronic attachments:

Consumer Watchdog/Public Citizen Feb. 9 letter to James Boyd

<http://www.consumerwatchdog.org/resources/CECLetter2-9-09.pdf>

Public records produced March 9

[http://www.consumerwatchdog.org/resources/HotFuelPRA\\_part1.pdf](http://www.consumerwatchdog.org/resources/HotFuelPRA_part1.pdf)

[http://www.consumerwatchdog.org/resources/HotFuelPRA\\_part2.pdf](http://www.consumerwatchdog.org/resources/HotFuelPRA_part2.pdf)

[http://www.consumerwatchdog.org/resources/HotFuelPRA\\_part3.pdf](http://www.consumerwatchdog.org/resources/HotFuelPRA_part3.pdf)

WSPA tax document (Form 990) showing executive position of Mrs. Boyd and composition of Board of Directors, including representatives of Chevron, Valero, BP, ExxonMobil, ConocoPhillips, Tesoro and Shell (refining)

[http://www.consumerwatchdog.org/resources/WSPA\\_990\\_2006.pdf](http://www.consumerwatchdog.org/resources/WSPA_990_2006.pdf)