



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA PUBLIC UTILITIES COMMISSION**

Compliance Review Unit  
State Personnel Board  
February 3, 2015

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## **INTRODUCTION**

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Public Utilities Commission (CPUC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from June 1, 2011, to November 30, 2012, and from January 1, 2013, to December 31, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Appointments Complied with Civil Service Laws and Board Rules	In Compliance
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Civil Service Laws and Board Rules	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The CPUC betters the lives of all Californians through their recognized leadership in innovative communications, energy, transportation, and water policies and regulation.

The CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy. The CPUC regulates utility services, stimulates innovation, and promotes competitive markets, where possible. As of June 30, 2014, the CPUC employs approximately 1,040 staff statewide.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CPUC examinations, appointments, EEO program, and PSC's from June 1, 2011, to November 30, 2012, and from January 1, 2013, to December 31, 2013. The CPUC review began as a baseline review. The review was later expanded to allow for a full compliance review. The primary objective of the review was to determine if CPUC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of CPUC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CPUC provided, which included examination plans, examination bulletins, job analyses, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CPUC EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CPUC staff.

CPUC PSC's were also randomly selected to ensure that various types of contracted services and contract amounts were reviewed. The CPUC contracted for cost containment services, marketing administration services, telecommunication services, and various personal services.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CPUC justifications for the contracts were legally sufficient. The review was limited to whether CPUC practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On January 6, 2015, an exit conference was held with the CPUC to explain and discuss the CRU's findings and recommendations, and to provide the CPUC with a copy of the CRU's draft report. The CPUC reviewed the draft report and had no department response to add.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (Ibid.) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (Ibid.) Every applicant for examination shall file a formal signed

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<sup>1</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the periods of review, the CPUC conducted 65 examinations. The CRU reviewed 21 of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applicants
Administrative Law Judge II	Open	Qualifications Appraisal Panel QAP <sup>2</sup> , Written <sup>3</sup>	Continuous	20
Assistant Chief, Administrative Law Judge	Open	Written, QAP	10/22/2013	16
Assistant Chief, Administrative Law Judge	Open	Written, QAP	10/24/2013	4
Associate Railroad Track Inspector	Open	Written	Continuous	2
Associate Transportation Representative	Open	QAP, Written	Continuous	26
Career Executive Appointment (CEA) IV, Director, Communications Director	CEA	QAP, Statement of Qualifications (SOQ) <sup>4</sup>	10/18/2012	12
CEA II, Deputy Director, Safety and Enforcement Division	CEA	QAP	3/19/2013	11

<sup>2</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

<sup>3</sup> A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

<sup>4</sup> In a statement of qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

Classification	Exam Type	Exam Components	Final File Date	No. of Applicants
CEA III, Deputy Director, Division of Ratepayer Advocates	CEA	SOQ	3/23/2012	3
Consumer Affairs Representative	Open	Written, Performance	9/19/2011	39
Legal Assistant	Open	QAP	11/27/2013	30
Personnel Technician II (Specialist)	Departmental Promotional	QAP	3/19/2013	11
Program & Project Supervisor	Open	Written, QAP	Continuous	78
Program Manager	Open	QAP, Written	Continuous	7
Public Utilities Counsel I	Promotional	QAP	Continuous	8
Public Utilities Counsel II	Open Promotional	QAP	Continuous	3
Public Utilities Regulatory Analyst II	Open	QAP, Written	Continuous	6
Public Utilities Regulatory Analyst V	Open	QAP, Written	Continuous	11
Public Utility Financial Examiner III	Open	QAP, Written	Continuous	9
Senior Legal Typist	Open	QAP	Continuous	16
Senior Transportation Representative	Open	QAP, Written	Continuous	15
Utilities Engineer	Open	Written	Continuous	47

**FINDING NO. 1 – Examinations Properly Complied with Civil Service Laws and Board Rules**

The CPUC administered 21 examinations to create eligible lists from which to make appointments. For all of the examinations, the CPUC published and distributed examination bulletins containing the required information. Applications received by the CPUC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The CPUC notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CPUC conducted during the compliance review period. Accordingly, the CPUC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

### Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the periods of review, the CPUC made 231 appointments. The CRU reviewed 62 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant Trainee	Certification List	Limited Term	Full Time	2
Accounting Administrator II	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Administrative Assistant I	Certification List	Permanent	Full Time	1
Administrative Law Judge II	Certification List	Permanent	Full Time	1
Assistant Chief, Administrative Law Judge	Certification List	Permanent	Full Time	1
Assistant Chief, Administrative Law Judge	Certification List	Limited Term	Full Time	1
Assistant Chief, Public Utilities Counsel	Certification List	Permanent	Full Time	1
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Budget Analyst	Certification List	Permanent	Full Time	1
Associate Transportation Operations Supervisor	Certification List	Permanent	Full Time	1
Consumer Affairs Representative	Certification List	Permanent	Full Time	1
Consumer Service Supervisor	Certification List	Permanent	Full Time	1
Information Officer I (Specialist)	Certification List	Permanent	Full Time	1



Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Legal Analyst	Certification List	Permanent	Full Time	1
Legal Counsel	Certification List	Permanent	Full Time	1
Legal Secretary	Certification List	Limited Term	Full Time	1
Legal Secretary/Senior Legal Typist	Certification List	Limited Term	Full Time	2
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Program and Project Supervisor	Certification List	Permanent	Full Time	4
Program Manager	Certification List	Permanent	Full Time	1
Public Utilities Financial Examiner IV	Certification List	Permanent	Full Time	1
Public Utilities Regulatory Analyst I	Certification List	Permanent	Full Time	2
Public Utilities Regulatory Analyst III	Certification List	Permanent	Full Time	5
Public Utilities Regulatory Analyst V	Certification List	Permanent	Full Time	2
Senior Information Systems Analysts (Supervisor)	Certification List	Permanent	Full Time	1
Senior Transportation Representative	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II	Certification List	Permanent	Full Time	1
Supervising Transportation Representative	Certification List	Permanent	Full Time	1
Support Services Assistant (General)	Certification List	Limited Term	Intermittent	1
Utilities Engineer	Certification List	Permanent	Full Time	1
CEA II, Deputy Director, Safety and Enforcement Division	Information List	CEA	Full Time	1
CEA III, Deputy Director, Division of Ratepayer Advocates	Information List	CEA	Full Time	1
Administrative Law Judge II	Mandatory Reinstatement	Permanent	Full Time	1
Public Utilities Regulatory Analyst IV	Mandatory Reinstatement	Permanent	Full Time	1
Public Utilities Regulatory Analyst V	Mandatory Reinstatement	Permanent	Full Time	1
Administrative Law Judge II	Permissive Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Permissive Reinstatement	Limited Term	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Personnel Technician I	Permissive Reinstatement	Limited Term	Full Time	1
Administrative Law Judge II	Transfer	Limited Term	Full Time	2
Consumer Affairs Representative	Transfer	Permanent	Full Time	1
Personnel Technician III	Transfer	Limited Term	Full Time	2
Public Utilities Regulatory Analyst V	Transfer	Limited Term	Full Time	1
Public Utility Financial Examiner III	Transfer	Permanent	Full Time	2
Staff Information Systems Analyst	Transfer	Permanent	Full Time	1

**FINDING NO. 2 – Appointments Properly Complied With Civil Service Laws and Board Rules**

The CPUC measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. The CPUC made appointments to six positions by transfer and three by permissive reinstatement. The CPUC verified the eligibility of each candidate to their appointed class, and thus complied with civil service laws and board rules in making those appointments (Cal. Code Reg., tit. 2, § 425.) For each of the 43 list appointments, the CPUC ordered a certification list of candidates ranked competitively. After properly clearing the SROA<sup>5</sup> list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification list. Accordingly, these appointments complied with civil service laws and board rules.

For appointments that are mandatory reinstatements, a state agency or department is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) However, the following conditions must apply: the employee accepted the appointment without a break in continuity of service and the

<sup>5</sup> The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

reinstatement is requested within ten working days after the effective date of the termination. (*Ibid.*)

The seven employees who were appointed as mandatory reinstatements to the CPUC accepted the appointments without a break in the continuity of their state service and requested reinstatement within ten working days after the effective date of the termination of their other position. Thus, these appointments were made in compliance with civil service laws and board rules. The two CEA appointments were also in alignment with civil service laws and board rules.

The CRU found no deficiencies in the appointments that the CPUC conducted during the compliance review period. Accordingly, the CRU found that all the appointments the CPUC made during the compliance review period satisfied civil service laws and board rules.

#### Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committing to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with California Department of Human Resources by providing access to all required files, documents, and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CPUC's EEO policies, procedures, and programs in effect during the compliance review period. In addition, the CRU interviewed appropriate CPUC staff.

**FINDING NO. 3 – The Equal Employment Opportunity Program Properly Complied with Civil Service Laws and Board Rules**

After reviewing the CPUC's EEO policies, procedures, and programs that were in effect during the compliance review period the CRU determined that the CPUC provided employees with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO policy also outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at the managerial level, reports directly to the director of the CPUC. The CPUC provided evidence showing its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. In addition, the CPUC has an established DAC. The CPUC completed a workforce analysis, which was submitted to the CRU. Accordingly, the CPUC's EEO program complied with civil service laws and Board rules.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review periods, the SPB reviewed 20 PSC's that were in effect, which are listed below:

Vendor	Services	Contract Dates	Total Amount	Justification Identified
David Berger	Expert Witness - PGE Pipeline Evaluation	5/1/2011 – 12/1/2012	\$250,000	Yes
Dolphin Express	Cost Containment	2/1/2011 – 4/1/2012	\$4,999	Exempt
Electric Power	Nevada Hydro Transmission Line - DRA	1/1/2011 – 6/1/2013	\$450,000	Yes
International Effectiveness	Interpreters	2/1/2012 – 2/1/2014	\$400,000	Yes
Jackson Lewis, LLP	Legal Services - Employment Law	8/1/2009 – 6/1/2013	\$500,000	Yes
JD Franz Research Inc.	Customer Experience Surveys	6/1/2012 – 12/1/2013	\$38,083	Yes
Legalink Inc.	Videography Services for Court Reporting	6/1/2010 – 5/1/2013	\$40,000	Yes
Level 4 Ventures	CHANGES Pilot Evaluation	5/1/2012 – 10/1/2012	\$79,923	Yes
Liberty Consulting Group	Evaluation of Electric Generation and Distribution System	10/1/2012 – 10/1/2013	\$618,137	Yes
Macias Consulting Group	California Solar Initiative	9/1/2012 – 9/1/2013	\$198,450	Yes
Navigant Consulting	Cost Containment	7/1/2012 – 6/1/2017	\$917,543	Yes
One World Communications	DDTP Marketing Administrator	3/1/2010 – 3/1/2013	\$11,763,360	Yes
Paul, Weiss, Rkind, Wharton, Gar	Legal Advice	6/1/2009 – 6/120/13	\$249,999	Yes
Reed Elsevier, Inc.	Electronic Law Library	11/1/2011 – 6/1/2014	\$60,000	Yes
Richard Heath & Associates	Outreach - CA Lifeline & CA Teleconnect	8/1/2011 – 7/1/2013	\$5,318,081	Yes
Richard Heath & Associates	Outreach - CA Lifeline & CA Teleconnect	8/1/2008 – 2/1/2014	\$2,416,939	Yes
Solix, Inc.	CA LifeLine Administrator	4/1/2012 - 1/1/2013	\$65,734,150	Yes
Sook Hee Choi	Personal Attendant	3/1/2011 – 3/1/2013	\$4,999	Exempt
UtiliWorks, LLC	Expert Witness	11/1/2010 – 6/1/2014	\$290,000	Yes

Vendor	Services	Contract Dates	Total Amount	Justification Identified
West Valley Mission CCD	Court Reporting Test	4/1/2012 – 4/1/2013	\$3,000	Exempt

**FINDING NO. 4 – Personal Services Contracts Complied with Civil Service Laws and Board Rules**

When a state agency requests approval from the Department of General Services (DGS) for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The CPUC had 20 PCS's in effect for a total amount \$89,337,663. It was beyond the scope of the review to make conclusions as to whether CPUC's justifications for the contract were legally sufficient. For all PSC's subject to the DGS approval, the CPUC provided specific and detailed factual information in the written justifications as to how each contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CPUC PSC's complied with civil service laws and board rules.

**DEPARTMENTAL RESPONSE**

The CPUC has no department response.

**SPB REPLY**

The SPB appreciates the cooperation of the CPUC during the compliance review.