Special Investigation Report
California Public Utilities Commission

State Personnel Board
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INTRODUCTION

The California State Personnel Board (SPB) conducted an investigation into the hiring practices of the California Public Utilities Commission (CPUC). The SPB interviewed current and former CPUC staff and reviewed statements, emails, and documents gathered during the course of its investigation. The SPB reviewed this information to determine whether the actions of CPUC officials and employees violated the California Constitution's requirement that "appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." (Cal. Const., art. VII, § 1.) Specifically, the scope of SPB's review includes appointments of certain employees made between June 2018 and March 2019 to determine whether civil service rules were violated and, if so, by whom. SPB also reviewed CPUC's nepotism policy and process.

PART A: HIRING

PRINCIPLES OF LAW

As noted above, the California Constitution requires that appointments be made based upon a system of merit. Appointments which do not satisfy this requirement are subject to being voided. The standards and process for voiding appointments are laid out in the Civil Service Act and California Code of Regulations.

To be valid, all civil service appointments require that the appointing power make and the employee accept the appointment in good faith. (Cal. Code Regs., tit. 2, §§ 243 and 548.120.) Title 2 of the California Code of Regulations directs that corrective action up to and including voiding an appointment shall be taken when it is determined that an appointment is unlawful. (Cal. Code Regs., tit. 2, §§ 243.2 and 548.120.1.) When an unlawful appointment is discovered, the good faith of both the appointing department and the appointed employee must be determined. (Cal. Code Regs., tit. 2, § 243) If both the appointing department and the employee acted in good faith, then no corrective action will be taken for appointments that have been in effect for one year or longer. (Gov. Code, § 19257.5; Cal. Code Regs., tit. 2, § 243.2.) If the department or the appointed employee acted in bad faith, then corrective action may be taken for appointments without regard to when the appointment was made. (Cal. Code Regs., tit. 2, § 243.2.)

When an unlawful appointment is terminated or corrected, an employee who acted in good faith is entitled to retain the salary and benefits earned up until the date of the termination or correction. However, the employee is not entitled to retain tenure in the position, seniority credits, permissive reinstatement eligibility, mandatory reinstatement rights, eligibility to take promotional exams, career credits, permanent or probationary

status and service toward completion of the probationary period, or continuity of service in determining the employee's right to or eligibility for any of the foregoing. (Cal. Code Regs., tit. 2, § 9.)

Good faith appointments on behalf of an appointing department require, *inter alia*, that the department: (1) intend to observe the spirit and intent of the law; (2) make a reasonable attempt to determine how the law should be applied; (3) assure that positions are properly classified; (4) assure that appointees have appropriate civil service appointment eligibility; (5) intend to employ the appointee in the class, tenure, and location to which the employee was appointed under the conditions reflected by the appointment document; and (6) act in a manner that does not improperly diminish the rights of other eligible persons. (Cal. Code Regs., tit. 2, §243.)

Good faith acceptance of an appointment requires the employee to: (1) intend to serve in the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document; (2) provide the appointing power with complete, factual, and truthful information necessary for a proper appointment; and (3) make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal. (Cal. Code Regs., tit. 2, §243.)

Any violation of the "good faith" requirement is cause for adverse action. (Cal. Code Regs., tit. 2, §243.1.) This cause for adverse action applies to employees who violate the requirement and employees in positions of authority who direct the violation of the "good faith" requirement. Adverse action may be taken against any employee, or person whose name appears on any employment list, for any cause for discipline specified in the Civil Service Act. (Gov. Code, § 19571.)

SUMMARY OF FINDINGS

I. CPUC Pre-Selected BA for Appointment to a Career Executive Assignment

On March 11, 2019, BA was appointed to the Director, Administrative Services Division (ASD) position, Career Executive Assignment (CEA) level B, within CPUC. The following facts demonstrate that CPUC failed to adhere to civil service rules when appointing BA to this assignment.

On January 23, 2019, CPUC posted a CEA exam bulletin for the Director, ASD, position. The bulletin described the job as follows:

> The position exercises broad policy-making authority over the following areas: accounting, budgeting, purchasing and contracts, and business services. . . The Director serves as the primary representative to a number of state control agencies . . .to ensure Commission compliance on a broad range of issues concerning budget, fiscal, procurement, contracting, stockroom, fleet, mailroom, reprographics, facilities, and the safety office. The Director, Administrative Services, represents the CPUC during the budget process before the Legislature.

A. BA was Less Qualified than Several Other Applicants

AS, the CPUC Executive Director, knew BA from having previously worked with him at the California Air Resources Board (CARB) and the California State Water Resources Control Board (SWRCB). AS worked at CARB from January 1, 2011 through February 20, 2018 and at SWRCB from June 17, 2002 through December 31, 2010. BA worked at CARB from August 29, 2011 through March 10, 2019 and at SWRCB from January 2, 1991 through August 28, 2011.

The exam bulletin for the ASD Director assignment indicated that the incumbent would represent the CPUC during the budget process before the Legislature. While several of the applicants had significant fiscal and budget management experience at an executive level, as well as post-graduate degrees and/or professional certifications, BA's experience and education were more limited in scope. BA's highest classification had been Accounting Administrator III or Chief of Accounting at CARB, and he had no college degree. Additionally, BA's 29-year work experience was solely in accounting, not budgets, contracting, procurement, fleet, safety, or facilities management. Further, BA's application and resume listed neither budget experience nor budget training.

AS, the Executive Director, participated on the exam panel comprised of herself, Chief Information Officer FG, and a junior Human Resources Analyst, KH. Each rater scored each of the 12 candidates during the exam process. After exam scoring had been completed, AS, FG and KH thereafter met to discuss each candidate's scores. At the conclusion of that review process, BA was the only applicant scored in Rank 1, having

received a score of 95%, despite the fact that he had less pertinent experience and education than several of the other candidates.

A review of the CEA exam scoring sheets shows that the scores of several applicants were lowered by one of the raters to align with AS's scores. Although the evidence did not establish that AS directed the rater to align his interview scores with hers, the rater felt pressured to do so as, in his opinion, AS made clear that BA was her preferred candidate and since the staff members (MT and KG, discussed in greater detail below) who delivered the exam packages for each candidate to the rater told him that "this is the one" when referring to BA's examination application package. It should be noted, however, that there is no evidence that this rater ever directly expressed to AS that he felt that the candidates should be scored differently, nor did he attempt to explain to AS why he believed his original score was more appropriate than the scores given by AS. As for the third rater, it is noted that he had no prior CEA exam scoring experience and, although he requested training or guidance on how to properly conduct a CEA examination, no such training or guidance was ever provided to him. As a result, that rater aligned his scores to AS's because she told him she was experienced in CEA scoring and because the rater believed that AS knew the requirements for the position better than he did. The downward scoring of several of the candidates eliminated any competition for BA in Rank 1. While AS states that BA was ultimately selected for the position because he was a standout in the hiring interview, the evidence indicates that the exam scoring was influenced by one rater's reporting relationship to AS and by one rater's lack of experience.

The hiring interview scoring was similarly influenced in this way. In fact, CPUC's Human Resources Division (HRD) team subsequently independently scored the applicants' hiring interviews and determined that other applicants should have scored as well if not better than BA during the hiring interview phase.

A totality of the circumstances indicates that BA was pre-selected for the ASD Director position. BA was well known to AS, having worked together at two prior agencies. BA's experience and education was more limited than other candidates'. Despite BA's inferior qualifications in comparison to some of the other applicants, the scores of more qualified candidates were lowered to mirror AS's scoring, resulting in BA having the highest score in the exam and hiring interview. The above-described irregularities in BA's appointment to the ASD Director position unfairly diminished the rights of other well-qualified candidates, in contravention of the requirements of California Code of Regulations., title 2, section 243, subdivision (b).

B. <u>There were Irregularities in Processing BA's Appointment</u>

1) <u>Exam Posting Irregularities</u>

BA was appointed on March 11, 2019, to the position of Director, ASD, which had been described in the exam bulletin as a policy level position with authority over accounting, budgeting, purchasing, contracts, and business services at a monthly salary of $10,010.

Within four months of his appointment, however, the Information Technology Services Division (ITSD), HRD, and the Utility Audits, Risk and Compliance Division and Enterprise Risk and Compliance Risk Office (UARCD/ERCO) were transferred under BA. Consequently, BA's monthly salary was raised to $14,922, a 49% increase.

By significantly increasing BA's job functions within only a few months of BA's appointment as Director, ASD, CPUC violated Rule 249.3[1] by not re-advertising the job. The original advertisement described a position with a more limited scope of functions and lower salary. By doing so, CPUC eliminated a more competitive pool of candidates who may have been attracted to a higher level job with significantly higher salary. Additionally, CPUC violated Rule 243 by failing to (1) observe the spirit and intent of the law; (2) ensure that the position was properly classified when it posted the exam bulletin; (3) employ the appointee in the class, tenure, and location to which the employee was appointed under the conditions reflected by the appointment document; and (4) by acting in a manner that improperly diminishes the rights of others.

While AS asserts that she transferred the additional functions to BA in order to assist her with an overwhelming workload, AS's stated reason does not excuse CPUC's failure to comply with applicable civil service posting and appointment requirements. Moreover, documents from HRD indicate that the changes to the position such as moving HRD and IT under ASD were contemplated several months prior to BA being hired for the position, thereby demonstrating that the subsequent increase in duties was contemplated well before BA was appointed to the position.

2) Salary Irregularities

Another concern regarding the irregularities in BA's appointment to the ASD Director assignment is the apparent attempt to artificially inflate his salary.

California Code of Regulations, title 2, section 599.991 states the following:

> A permanent employee who, without a break in service, promotes from a general civil service class or a career executive assignment position to another career executive assignment position with a higher salary range will be entitled to one step and may receive two steps above the rate last received provided that rate does not exceed the maximum rate of the higher salary range unless authorized under section 599.990 of these regulations.

Therefore, newly appointed CEAs receive the minimum of the range or a salary rate of up to two steps above their current salary rate. BA's prior salary at CARB was $8,966, so the highest salary BA could be granted was the minimum of the CEA B level, $10,010, which was an 11.6% increase over his CARB salary.

[1] California Code of Regulations, title 2, section 249.3 sets forth the conditions for not re-announcing a job that was previously announced within 180 calendar days provided that the job has: ". . . the same position title, classification code, base, tenure, reporting location, and duties."

On March 5, 2019, AS discussed with HRD Manager SS that she wanted BA's salary to be offered above the minimum salary of $10,010. SS indicated to AS that California Code of Regulations, title 2, section 599.991 prohibited CPUC from offering BA a salary over $10,010. She further explained that the reason other program directors had higher salaries was due to salary compaction since they supervised higher salaried staff. On March 11, 2019, BA's starting salary was set at $10,010.

In July 2019, however, salary compaction was created for the ASD Director assignment when the HRD, ITSD, and UARCD/ERCO programs were transferred to BA, as the UARCD/ERCO programs were staffed with classifications at a higher compensation rate than $10,010. This reorganization created a justification for raising BA's salary to $14,922. Additionally, even though BA did not start supervising the UARCD/ERCO programs until July 2019, AS directed that BA receive retroactive pay back to May 2019. Furthermore, two months later, in September 2019, the UARCD/ERCO programs were removed from BA's supervision, thereby eliminating the justification for the higher salary. However, BA's salary was not modified downward as a result of that reassignment of duties. Although, AS states she "did not pay attention" to the salary of the position, documentation indicates that she wanted to bring in BA at a higher rate of pay than could be justified. In addition, after receiving his offer of employment, including a salary of $10,010, BA told KG, 'this is not what [AS] discussed with me earlier…"

Additionally, on October 21, 2019, as part of an ongoing review under the delegation agreement, CalHR requested documentation from CPUC justifying BA's salary increase. On November 6, 2019, the justification prepared by BA and approved by AS contained misinformation related to the scope of BA's duties. Specifically, the justification misrepresented that BA was still responsible for the UARCD/ERCO programs – thereby justifying the increased salary – despite the fact that oversight of those units had been removed from BA's authority the previous month. As such, BA's and AS's re-representations to CalHR in this regard were misleading and deceptive.

Since salary issues fall under the purview of CalHR, this matter will be referred to CalHR for further review and appropriate action.

Corrective Action Regarding the Appointment

Any one of the above-described irregularities in BA's appointment to the ASD Director assignment could, when considered on its own, indicate simple errors in the appointment process. However, when considered in their totality, the above-described irregularities paint a picture of a deliberate effort on the part of CPUC and/or AS to circumvent civil service examination and appointment requirements when appointing BA to the ASD Director assignment.

CPUC is directed to review BA's appointment to the ASD Director assignment for any and all appropriate corrective action, including voiding the appointment due to irregularities in the examination and appointment process. (Cal. Code Regs, tit. 2, §§ 243.2 and 548.120.1.) CPUC shall immediately notify BA regarding any corrective action taken in

this regard pursuant to California Code of Regulations, title 2, section 243.5. CPUC shall provide the SPB Executive Officer with the information it develops while conducting its review, and shall specifically address the issue of whether the appointment was made in bad faith. Should CPUC determine that the appointment should not be voided, and/or that other corrective action regarding this appointment is not appropriate, CPUC shall provide a written statement of its reasons therefore to the SPB Executive Officer.

II. Transactions Related to KG and MT

On March 28, 2018, CPUC posted a bulletin for two Staff Services Manager II (SSM II) (Managerial) job opportunities, with a final filing date of April 11, 2018. AS had specifically requested that HRD post the positions as SSM II positions. AS described the work that the incumbents would be performing to the then-CPUC HR director, CH, as being an extension of the Executive Director, performing high-level policy and project management activities. CH suggested that AS use the Public Utilities Regulatory Analyst (PURA) classification for this work given PURA appointees' knowledge of the CPUC; however, AS stated she did not want the recruitment to be limited to CPUC employees, and CPUC is the primary appointing authority utilizing the PURA classification. As a result, the HRD established two high-level SSM II positions that reported directly to AS in the Sacramento Executive Director's Office.

AS selected five of 107 total applicants for interviews. Four of five had either worked at CPUC or CARB with AS, including KG and MT. Although AS contends that the HRD screened the applications, the completed CPUC Selection Plan listed AS as the only application screening panelist. Additionally, the hiring package did not include any hiring screening criteria, and there is no evidence that any standard screening was conducted. Furthermore, the HRD staff who were interviewed indicated that HRD staff did not screen these applications nor do they routinely perform application screening; rather, application screening is normally conducted by the program. Based on the SPB's review of the applications submitted, there were over a dozen candidates who had more relevant policy and/or project management experience than the two candidates ultimately selected for the positions.

On June 1, 2018, both KG and MT, respectively, were appointed to the SSM II (Managerial) positions. AS prepared a justification memo to the HRD on the selection of KG and MT, stating that "our office needs a higher classification to hire a more experienced staff with the appropriate skill set to meet the evolving needs of the Executive Director. We need two SSM IIs (KG and MT) in their expert role of a technical researcher and advisor".

The following is an excerpt from CalHR's position allocation guidelines regarding the appropriate utilization of the SSM II (Managerial) classification:

> A non-supervisory SSM II allocation can be made to positions that provide a statewide or multi-departmental leadership role in a program setting. Positions are responsible for policy formulation, providing direction, and oversight on a statewide

basis. The position usually works with State departments in developing a master plan with significant impact across many or all departments.

Positions at this level can be project managers assigned to work on innovative projects of major departmental or statewide impact. Allocations should be limited to the duration of the project. Incumbents will have total responsibility for the development and implementation of policy, process, or other unique projects with new and innovative parameters. Incumbents usually have statewide expertise in the subject matter.

Positions at this level can also serve as taskforce leaders with full authority for making management and executive decisions on sensitive statewide program issues. Allocations should be limited to the duration of the taskforce.

However, rather than performing high-level policy and project management activities as AS described to CH, KG and MT had not been assigned functions and duties at the SSM II (Managerial) level; instead, they had been assigned administrative and analyst level duties. The essential functions listed on KG's and MT's job opportunity duty statements include:

- Review, analyze and research the specific regulatory, legal or control agency mandates as it applies to specific operational functions to ensure CPUC has policies and procedures to adequately comply.
- Provide technical reporting updates throughout process [sic] and prepare final reports on findings. Make recommendations on how to move forward with practical applications and written procedures. Communicate with all impacted areas and set up processes ensuring compliance, regular reporting and follow-up are in place.
- Plan and coordinate outreach activities, public forums and lead workshops to communicate externally any changes that could impact internal customers, the public, or stakeholders.
- Create a process for continued education of policies and information that customers, the public, and stakeholders will need as it relates to the changes or updates to policy.

Sometime after CPUC publicly posted the announcement for the two SSM II (Managerial) positions, CH learned that staff from both the HRD and the State Controller's Office had expressed concerns that the duty statement described analyst-level duties and not higher level SSM II (Managerial) duties. As a result, CH revised the duty statement in May of 2018 in an attempt to justify allocating the positions at the SSM II (Managerial) level. The duty statement was subsequently revised to include:

- Using expert knowledge and drawing from past experiences, independently reviews, analyzes, and researches the specific regulatory, legal, or control agency mandates as it applies to specific operational functions to ensure CPUC has policies and procedures to adequately comply to provide proposed changes to

executive level management for adoption. May directly oversee the implementation and monitor efficacy for continued change or amendments.

- Research matters to publish comprehensive expert technical reports and updates throughout processes and final reports on findings to be adopted and used to influence the Executive Director and other executive level management in commission-wide efforts. Serves as a technical expert to make recommendations on how to move forward with practical applications and written procedures. Identifies and communicates with all impacted stakeholders and establishes processes ensuring compliance, regular reporting, and follow-up.
- Acting on behalf of the Executive Director, plans and coordinates outreach initiatives, public forums, and independently formulates and leads workshops to communicate changes to external stakeholders that impact the Commission, the public, or stakeholders.
- This position may require occasional weekend work for Outreach event and other job related duties.

On September 25, 2019, in an email to the executive staff, AS described KG's and MT's roles as follows:

> [As you know when I started I didn't have much of a support team, so in essence I hired a team to help me navigate the various processes, but to also learn and grow to better assist the CPUC and all of us. I am continuing to grow my Executive team…, in that effort I have given them each key areas to follow.
>
> [KG] – Transportation (Helping out on all administrative issues especially policies, appointments, CEAs, my calendar, etc.)
>
> [MT] – Fires, 1054, 901, etc. (Writing duty statements for AB 1054 positions, wrote the correspondence manual that will soon be issued, Organizational charts, and reconciling issues as they arise, etc.
>
> They will continue to have diversions due to the many issues that continue to rise as it relates to administrative and process issues, but I am hoping they can begin to develop expertise in the areas noted above."

Neither the original nor the revised duty statements, nor AS's description of KG's and MT's duties, indicate statewide or multi-department leadership, policy formulation, or innovative project management. Instead, the duty statements and AS's email describe analyst-level and administrative job functions.

Since position allocations fall under CalHR's purview, SPB requested that CalHR review the duty statements for these two positions. Upon review, CalHR concurred that neither the original nor the revised duty statements support an SSM II (Managerial) allocation.

When asked for examples of the type of work that KG and MT performed at the time of hire, AS stated that, prior to the COVID-19 pandemic, CPUC had very few internal policies

and procedures and that KG and MT have done a great deal of work on administrative policies. Although policy creation and revision is one of the duties listed in the SSM II (Managerial) duty statements at issue here, those same duty statements clearly indicate that the incumbents would be performing a wide variety of other duties as well. More importantly, it is clear that the two positions were not properly allocated when they were created, as the duties KG and MT were originally assigned to perform were not consistent with the duties ordinarily performed by an SSM II.

Corrective Action Regarding the Appointments

Although the evidence indicates that CPUC did not possess a reasonable, good faith belief that the duties contemplated for the two positions were commensurate with the type of high-level duties ordinarily performed by an SSM II (Managerial), position allocations fall under CalHR's jurisdiction. Accordingly, this matter is being referred back to CPUC and instructed to consult with CalHR in determining whether KG's and MT's past and present workloads support the SSM II (Managerial) allocations, and whether any further action regarding these appointments is appropriate. Within 60 days of the date of this report, CPUC must submit to the Executive Officer written confirmation of the action taken, along with supporting documentation. If CPUC determines that these appointments were made in good faith, it must justify its position to the SPB's Executive Officer.

III. Transactions Related to PB and DC

On November 26, 2018, CPUC posted job bulletins for two PURA V positions in the Sacramento area office, with a final filing date of December 10, 2018. The PURA classification encompasses highly technical job duties which involves CPUC policy in the areas of energy efficiency, electric restructuring, energy rate design, low income programs, and telecommunications policy. Incumbents at the higher levels of the PURA classifications are considered experts in their field. The PURA class series, with levels from I to V, is designed as the type of class where the employee gains qualifying experience at each level, allowing them to meet the minimum qualifications (MQ's) for each successively higher level until they top out at PURA V.

Eight candidates applied for the positions, including two internal promotional candidates, ES and JO, who met the minimum qualifications and who were both assigned to the San Francisco office. ES had over four years of experience as a PURA IV "drafting technical and policy recommendations" and "resolving complex utility regulatory issues." JO had over six years of experience as a PURA III assisting in the development of utility regulations and pilot programs, and was previously a legal and water advisor to a Commissioner. Two external applicants, DC and PB, were rejected for failing to meet the MQ's. PB had previously worked with AS at CARB as the Chief of the Budgets/Fees Branch and at SWRCB. DC had also previously worked with AS at CARB as the manager of the Space Acquisition Unit.

On January 17, 2019, rather than promoting either of the two internal candidates who met the minimum qualifications for the appointments, the job bulletins were re-posted to allow for an appointment at either the PURA IV or V level, as well as the acceptance of a Training and Development (T&D) assignment.[2] A T&D Assignment is a temporary assignment designed, in part, to prepare employees to meet the minimum qualifications for promotional and open civil service examinations. (Gov. Code, § 19050.8.) "Although T&D Assignments are used to prepare employees for advancement, they cannot legally replace the competitive promotion process." (Personnel Management Policy and Procedures Manual (PMPPM), § 340.) Departments must utilize the T&D appointment process in a manner that gives fair consideration to the interests of all concerned employees, since T&D Assignments usually confer career advancement advantages. (PMPPM, §340.) Furthermore, upon completion of a T&D assignment, any permanent movement by the T&D appointee to higher levels must always involve competition in a promotional examination at some point. (PMPPM, § 340.)

The revised job bulletin and duty statement for the PURA IV/V positions focused on general administrative functions in assisting with operational policy, fiscal implications, and budget and resource needs, rather than describing the type of highly technical energy and telecommunications policy level functions and duties set forth in the official PURA IV/V classification specifications. Specifically, the duty statement described: legislative, economic, policy and/or technical analyses and research on a wide range of regulatory issues *pertaining to fiscal and resource adequacy* [emphasis added]; consultation on fiscal policies and strategies in relation to program performance and needs; identification of trends in regulation, technology, and economics; and improvement of the internal operations of the CPUC. That duty statement directly contrasts with a prior PURA V duty statement where the incumbent was expected to gather, analyze, and maintain data on electric utility compliance and wildfire safety standards and to develop, implement, and enforce electric utility wildfire standards and regulations. In short, the revised duty statement at issue here described duties that were not consistent with the duties ordinarily performed by a PURA IV/V appointee, and clearly deviated from the type of duties that CPUC had previously contemplated a PURA IV/V appointee would be performing.

Furthermore, the revised job postings required that a Statement of Qualifications (SOQ) be submitted addressing the following:

1. Describe your experience in the capacity of an advisor to executive management including experience related to bill analyses and legislative proposals; Budget Change Proposals; financial projections and expenditures; and implementation of new policies/programs.
2. Describe your experience developing and maintaining effective partnerships with administrative control agencies, the Legislature, and local, state, and federal agencies.

[2] Due to the rather small candidate pool that originally applied for the PURA V position, HRD recommended to AS that T&D candidates also be considered for appointment.

The SOQ did not ask the candidates to address their experience in regulatory analysis or utility policy, the primary purposes of the PURA classification. By contrast, in an unrelated PURA V recruitment, the first question in the SOQ asked the applicant to describe his or her experience with electric safety programs, wildlife mitigation, vegetation management, or risk analysis.

Four candidates were selected for interviews, PB, DC, and the two CPUC PURA employees, ES and JO. AS and FG, the Chief Information Officer (CIO), who is not a subject matter expert in public utilities regulations and analysis, comprised the interview panel, and asked the following questions:

1. This position will require a lot of flexibility, and juggling of assignments – tell me how you would handle a job like this.
2. Communication is an important skill in any job, and in this job, you will have many competing priorities – how will you manage to communicate issues or assignments on a regular basis?
3. Staying with the theme of communication – do you feel comfortable communicating with varying levels of management and staff and what types of techniques do you use?
4. Describe your role in a complex project and how you navigated people, processes, and the outcome of the project.
5. If hired, what strengths do you bring to the position?

These questions, similar to the SOQ questions, show very little interest in a candidate's ability to work in a highly technical area of utility policy. In comparison, another PURA V recruitment directed the applicants to provide an example of an assignment that required the applicant to conduct an analysis that informed greenhouse gas reduction strategy or electric sector regulations, and also directed the applicants to describe relevant work experience in long-term energy policy and/or resource planning and identify the operational issues that face the electric sector given the need to reduce emissions in California over the next 20 years.

PB and DC were selected for the positions and, because they did not meet the MQ's were placed in T&D Assignments as Public Utilities Regulatory Analysts IV & V, on February, 19, 2019, and March 1, 2019, respectively. PB's prior experience at CARB and SWRCB was in fiscal, budgets, and administrative duties. DC's experience at CARB was as a space acquisition manager. Prior to that, DC's experience was as an executive assistant and various duties in human resources. The fact that two candidates without any relevant experience, let alone any experience as a PURA I-III, were chosen over others with actual PURA experience does not seem to support the merit principle.

When asked why two unqualified external candidates were selected over two highly qualified internal candidates, AS indicated that JO's reluctance to move from San Francisco to Sacramento, coupled with direction AS had received from the CPUC Commission President to de-centralize operations from the San Francisco office to CPUC offices in Sacramento and Los Angeles, led AS to determine JO was not a viable

candidate. As for ES's application, AS stated that he was not considered for the appointment because he had performed very poorly during the hiring interview. AS's assertions notwithstanding, it is questionable whether CPUC's desire to de-centralize its operations from the San Francisco office should impinge upon constitutionally-mandated merit principles in the hiring process. Additional questions arise concerning why ES's actual experience performing PURA duties were not taken into consideration and weighted more heavily than his purported poor interview skills, particularly since the two candidates ultimately appointed to the positions had neither the qualifications nor relevant experience to perform the PURA duties.

While T&D assignments are intended to prepare employees to meet the minimum qualifications for promotional and open civil service examinations, the duties outlined in the duty statements at issue here will not impart the knowledge and experience necessary to meet the minimum qualifications of the PURA series or prepare the assigned employees to pass the PURA exam, since the described duties were not consistent with the types of duties normally performed by a PURA IV or V. Although AS did state that DC and PB have prepared analyses, white papers, and correspondence in the fields of electricity (MT) and gas (PB), the workload descriptions AS provided do not indicate the need for any extensive expertise in these areas or for complicated calculations or analyses. Instead, PB and DC have been assigned administrative tasks as described in AS's September 25, 2019 email titled "Executive Office Update":

> As you know when I started I didn't have much of a support team, so in essence I hired a team to help me navigate the various processes, but to also learn and grow to better assist the CPUC and all of us. I am continuing to grow my Executive team…, in that effort I have given them each key areas to follow.
>
> [PB] – Gas (Assisting heavily on Budgets and some contracts as well as reviewing reports, etc.)
>
> [DC] - Electric ([DC] is also helping staff the Lands Commission to track issues, following PSPS and AFN issues related to PSPS, and reading and writing reports, etc.)
>
> They will continue to have diversions due to the many issues that continue to rise as it relates to administrative and process issues, but I am hoping they can begin to develop expertise in the areas noted above.

AS's email provides evidence that these staff were assigned general administrative functions related to the Gas and Electric program areas, not highly technical utility functions. CPUC inappropriately used the T&D Assignment to circumvent the competitive promotional process without fair consideration of other eligible employees. CPUC inappropriately defined the job duties and tailored the interview questions so that candidates without PURA experience would be successful, despite the fact that the PURA IV and V levels are technical experts in public utility regulatory action. AS also indicated that duty statements and interview questions for both the SSM II and PURA positions

were drafted in a deliberately broad manner because AS was not necessarily looking for candidates with the most technical expertise, but was instead looking for candidates who can analyze and respond to a variety of situations and who are good at dealing with people. While those are legitimate considerations, AS's approach places too little emphasis on underlying technical expertise for appointment to the PURA IV or V classification.

While T&D Assignments do not fall under the rules applicable to good faith appointments and corrections of bad faith appointments, civil service policy prohibits using the T&D process to circumvent the competitive promotional process. After reviewing all relevant information, it is not unreasonable to conclude that AS's purpose in appointing PB and DC to the T&D assignments at issue here was to confer a career advancement advantage onto PB and DC to the exclusion of other CPUC employees who could have equally benefitted from the opportunity.

Corrective Action Regarding the Assignments

Since a T&D is an *assignment*, rather than an *appointment*, Board rules 243 and 243.2 pertaining to good faith appointments and correction of bad faith appointments do not apply. Since there is no appointment involved, we make no determination as to the good faith of the appointing power and the employees under rule 243.2. Consequently, there is no appointment to correct *under Board rules*. However, as these two assignments appear to be inappropriately allocated to the PURA IV and V classifications, we direct CPUC to review these assignments in consultation with CalHR, and take action as appropriate, including terminating these assignments. If CPUC determines that PB and DC did not perform the duties contained in the PURA IV and V class specification, CPUC must indicate in the T&D termination notice to the affected employees that they may not use the experience to meet the minimum qualifications for any state examinations.

IV. Further Observations Involving Hiring Employees from CARB/SWRCB

Since AS was hired on February 21, 2018, CPUC has hired 17 employees (10 permanent, three limited-term, and four Special Consultants and/or Retired Annuitants) with whom AS worked previously at CARB and/or SWRCB. Two of six, or 33%, of the Deputy Executive Directors are from CARB and/or SWRCB. In addition, seven of 24, or 29%, of the Administrative Services Division (ASD) Managers are from CARB and/or SWRCB.

AS also established a Sacramento Executive Director's Office, and of the nine newly created positions, 4, or 44%, of these positions were filled by CARB employees with whom AS had previously worked.

The merit system is designed to create a fair and open selection process in order to hire the most qualified workforce to perform the state's work. While a hiring authority's prior knowledge of an applicant's good work does not render the process unfair, the department must ensure that the process is objectively administered so that the most

competitive candidates are fairly considered and that the selection is based on a candidate's merit and fitness.

CONCLUSION

SPB identified several appointments and transactions of highly questionable legitimacy. As CPUC reviews these transactions and investigates the underlying circumstances, CPUC is directed to supplement the evidence cited herein as appropriate.

Although AS was at the center of the issues previously identified, the HRD was, to a degree, complicit in the above-described deficiencies. HRD did not ensure the CEA interview panel members were qualified to serve in that role, nor were they given instruction or direction regarding their need to provide accurate analyses based on their own independent, best judgment. Also, it does not appear that HRD ever cautioned AS about the hiring and allocation practices AS wanted to employ, or that HRD staff attempted to counsel AS about appropriate hiring and allocation practices. Instead, it appears that everyone at CPUC repeatedly did their best to comply with AS's wishes, regardless of whether those wishes complied with legal requirements, and made no real effort to correct or guide AS. While it was incumbent upon AS to ensure that she did not overly influence the hiring and allocation process, it was also incumbent upon HRD staff to ensure the CPUC's hiring processes were merit based.

CPUC shall preserve all evidence relevant to the transactions covered by this report and take all actions directed within this report within 60 days of the SPB Executive Officer's approval of these findings. Additionally, within 60 days, CPUC shall provide SPB with a written update regarding its evaluation of the issues raised in this report. In addition to information that CPUC deems important, the evaluation shall detail all actions taken by CPUC in response to the findings addressed herein.

PART B: NEPOTISM

PRINCIPLES OF POLICY

On May 6, 2015, CalHR issued a Personnel Management Liaisons memorandum (PML) concerning statewide guidance on nepotism policies. The 2015 PML stated, “All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit.” In addition, the PML set forth five considerations when anti-nepotism policies are being developed or revised:

1. Whether the policy will require current employees to notify their supervisor or other appropriate person when working assignments are in conflict with the nepotism policy.

2. Whether the policy will provide an exceptions provision and a corresponding procedure for an employee or supervisor to request an exception to the policy.

3. Whether the policy will include guidelines for addressing instances when a personal relationship arises during employment and how the department will address a personal relationship in violation of the policy (e.g., which employee will be transferred or reassigned and the process in carrying out that transfer or reassignment).

4. Whether the policy will require notification of employment candidates in the interview or in the job posting and whether new employees will be required to certify they do not currently have a personal relationship in violation of the policy.

5. Whether the policy includes guidelines for addressing nepotism complaints from employees such as who to report them to, who will investigate allegations, etc.

Further, the PML acknowledged that many departments already had policy statements on nepotism. Nonetheless, these departments “should review their policies to determine if there is any need to update their statements or make them more specific to the needs of their organizations. Those departments without a nepotism policy should develop one.”

SUMMARY OF FINDINGS

I. The CPUC Does Not Have a Nepotism Policy

The CPUC does not have a nepotism policy to ensure consistency with current statewide guidance on preventing nepotism. Corrective action is, therefore, warranted.

II. The CPUC Does Not Track Personal Relationships

The CPUC has no information as to the number of personal relationships within CPUC. The CPUC does not know whether employees with personal relationships report to one another or to the same supervisor or work within the same unit.

It is critical that departments know of personal relationships among employees so as to avoid conflicts of interest and employee morale problems.

CONCLUSION

Effective anti-nepotism policies are vital for purposes of a strong civil service merit system, fair supervision, positive employee morale, and protections against abuse. In order to effectively manage its workforce, it is recommended that CPUC conduct a comprehensive review to identify all personal relationships among its employees and work with CalHR, pursuant to civil service rules, to address any organizational relationships that violate anti-nepotism principles. It is recommended that CPUC take immediate action to implement an anti-nepotism policy that is consistent with CalHR's PML. Additionally, it is recommended that all CPUC employees, including the Commissioners and Executive staff, receive training on the new anti-nepotism policies within three months of the effective date of the policies and thereafter on a routine basis, not less than every two years. All new CPUC employees and executives shall receive anti-nepotism training within 60 days from the date of appointment.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

MARYBEL BATJER
PRESIDENT

TEL: (916) 823-4840
WWW.CPUC.CA.GOV

July 31, 2020

Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose:

The California Public Utilities Commission (CPUC) would like to thank the State Personnel Board (SPB) Investigations Unit for the time and effort it dedicated to investigating hiring practices at the CPUC. The CPUC shares your commitment in protecting the merit system as required by the California Constitution ("to ensure appointments and promotions are made under a general system based on merit ascertained by competitive examination"). The SPB findings and recommendations support the CPUC's duty to address any and all hiring irregularities and ensure they do not reoccur.

The CPUC has initiated a thorough review and investigation of SPB's findings. This review includes various documents, files, clarification interviews, the study of applicable laws, rules, and regulations, as well as consultation with the California Department of Human Resources (CalHR). Though the CPUC continues its review process, the SPB's findings and recommendations have raised serious concerns to the Commissioners regarding certain hiring practices at the CPUC and which necessitate the consideration of corrective actions which are unfortunate, but appropriate.

Below please see the CPUC response to the Draft Special Investigation Report (Draft Report), including items requiring clarification. The CPUC is still in the process of completing its review and has yet to make any final determinations.

CPUC Response to SPB Finding 1A.

As the CPUC works towards finalizing its review, it is important to clarify distinct phases of the Career Executive Assignment (CEA) process at the CPUC which appeared to be indistinguishable in the Draft Report. The scoring and selection of a CEA candidate is primarily based on two components: the exam process, where the candidates are scored based on information submitted in their Statement of Qualifications (SOQ), and the hiring interview, where candidates

are scored based on their oral responses to questions during the interview. The hiring interview may solicit questions related to a candidate's education and experience. As a standard practice, only responses to the SOQs are scored during the exam process. No other information is considered during the scoring of the exam. The candidates' education and experience are only directly considered during the second component of the selection process, the hiring interview.

In this case, the exam panel was comprised of three individuals, including the hiring manager. The CPUC Human Resources Division (HRD) assigned the chairperson for the exam panel, not the hiring manager. The chairperson was certified to chair examinations. Although this was his first CEA exam panel, he had chaired other civil service exams.

During the exam process, the panel members must be in agreement as to the candidate's general rating by making sure the candidate is in the same rating band. This is done to ensure the candidates are rated consistently by the panel. On occasion, this requires discussion and readjustment of scores, so it is not unusual for panel members to change their scores of candidates. Changed scores on the CEA SOQ rating sheets in this case do not seem to indicate anything out of the ordinary.

When the CPUC HRD independently re-scored each candidate's SOQ, the same candidate ranked first (although his score was not as high as originally scored by the exam panel). Even so, the CPUC HRD did not find any irregularity in the operational aspects of SOQ scoring during the exam process.

However, the CPUC has identified other aspects of the exam process they may have been compromised. The entire scope of duties for the position was not advertised (see discussion in 1B) and, therefore, the appropriate SOQ questions that would have solicited information reflective of the qualifications for the position would likely have been different. Also, the exam scoring process may have been compromised if the other panel members felt compelled to defer to the hiring manager's preferences beyond the reasonably acceptable practice of adjusting SOQ scores for purposes of consistency for placement of a candidate within the appropriate band.

Questions of good faith arise with the hiring interviews. A panel member on the hiring interview stated he felt there was a candidate that performed far better than the selected candidate. He stated he felt pressured to adjust his scoring downward during the hiring interview to align with the hiring manager's score.

Given contradicting statements gathered in the review process, the CPUC is unable to confirm whether one or more of the three panel members were

influenced by the hiring manager or her staff on which candidate to select, either during the exam process or hiring interview.

Nonetheless, given the Draft Report erroneously refers to the interviews as part of the exam process, the CPUC requests SPB to recognize the hiring interviews were a separate and distinct component of this CEA selection process.

CPUC Response to SPB Finding 1B.

The CPUC agrees with SPB that the exam posting and duty statement should have included the responsibilities over Human Resources and Information Technology at the time of posting, however, a concept change with CalHR was not called for at this time given the Deputy Executive Director of Administration had these responsibilities already included in the CEA concept on file. The addition of the Audits function was not contemplated at the time of appointment, so did not require a concept change to CalHR at that point.

The addition of the Audits function under the Deputy Executive Director of Administration should have resulted in a minor concept change to CalHR. This was sent to CalHR on or about October 2018, several months after the effective date of May 1, 2018. The subsequent removal of the Audits function required a correction to the CEA concept as well. This correction was made in May 2020.

When reviewed in context, the addition of the Audits function appears to be an attempt to inflate BA's salary, particularly when it is backdated several months before it occurred and only lasted for approximately two months afterwards. This should have been addressed by CPUC management. BA's salary was never corrected.

<u>Status of CPUC Review of SPB Findings 1A and 1B.</u>

It does appear that the appointment process may have compromised the good faith appointment requirements under 2 CCR §243 (b) (3), (5) and (7), which requires ensuring "that the position of the appointment has been properly classified" and the intention "to employ the selected candidate in the classification…under terms and conditions set forth in the appointment documents, and acting in a manner that does not violate the rights and privileges of other persons." This should have been addressed by CPUC management.

The CPUC is not aware of evidence to reach the conclusion that the candidate accepted the appointment in other than good faith. CPUC will provide SPB a progress report within the next 60 days and notify the affected employees when CPUC makes a final determination.

The CPUC has initiated the review of the appointment of the Deputy Executive Director of Administration for any and all appropriate corrective action, including the voiding of the appointment due to irregularities in the examination and appointment process. The CPUC notified the affected employee of the potential unlawful appointment and will notify the employee when it makes its final determination.

CPUC Response to SPB Finding 2.

No facts require clarification for this finding.

Status of CPUC Review of SPB Finding 2:

The CPUC has initiated the review of the appointments to the relevant Staff Services Manager II (M) positions for any and all appropriate corrective action, including the voiding of the appointments due to irregularities in the appointment process.

The CPUC is not aware of evidence to reach the conclusion that the candidates accepted the appointments in other than good faith. However, the CPUC is still in the process of completing its review and has notified the affected employees of the potential unlawful appointment. The CPUC will provide SPB a progress report within the next 60 days and notify the affected employees when the CPUC makes a final determination.

CPUC Response to SPB Finding 3.

No facts require clarification for this finding.

Status of CPUC Review of SPB Finding 3:

The CPUC HR Division is undertaking a desk audit to review the duties being performed to ascertain whether they are consistent with the Public Utilities Regulatory Analyst (PURA) IV and V levels.

The CPUC has initiated the review of the Training and Development (T&D) Assignments for any and all appropriate corrective action, including the employees not earning experience at the PURA IV and V levels. The CPUC notified the affected employees of the potential problem with their T&D Assignments and will notify the employees when it makes its final determination.

The CPUC is not aware of evidence to reach the conclusion that the candidates accepted the assignments in other than good faith. The CPUC will provide SPB a progress report within the next 60 days and notify the affected employees when the CPUC makes a final determination.

CPUC Response to SPB Finding 4.

No facts require clarification for this finding.

State of CPUC Review of SPB Finding 4:

The CPUC HRD will review the other appointments referred to in the Draft Report to ensure the merit system was followed. If irregularities are found, the CPUC will take appropriate corrective action, including the voiding of the appointments.

CPUC Response to SPB Part B Finding:

The CPUC released a Nepotism Policy in May 2020, along with a requirement for employees to disclose personal relationships. Personal relationships are now tracked and any that pose a potential conflict of interest will be identified and corrected. This will be carried out annually.

CPUC Conclusion to SPB Part B Finding:

The CPUC has identified additional items to place in its Nepotism Policy when looking at the guidance in the 5-6-2015 CalHR guidance and will make those additions. Customized nepotism training will be developed by the end of the calendar year for all employees.

The CPUC will also review where the training of Human Resources Staff and Hiring Managers is necessary to ensure the merit system is protected. Additionally, the CPUC will implement new human resources procedures and controls where needed to ensure that all civil service rules are followed.

Again, thank you for the extensive work and recommendations to improve the CPUC's hiring practices. For any questions related to the substance of this letter, please contact Ms. Cris Rojas, Deputy Executive Director of Human Resources, at (916) 936-8004.

Sincerely,

Marybel Batjer, President
California Public Utilities Commission

STATE PERSONNEL BOARD'S (SPB) COMMENTS TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION'S (CPUC) RESPONSE

Finding 1A

In response to the CPUC's suggestion that the SPB draft report does not clearly describe the Career Executive Assignment (CEA) recruitment process, for purposes of clarity, the final report has been modified to describe the examination and the hiring interview components of the CPUC's CEA recruitment process as two separate phases.

With respect to CPUC's statement that "the CPUC HRD did not find any irregularity in the operational aspects of SOQ scoring during the exam process," because "it is not unusual for panel members to change their scores of candidates" in order "to ensure the candidates are rated consistently by the panel," the CPUC fails to consider the specific circumstances surrounding the scoring of this particular exam. While the readjustment of exam scores by itself is not considered an irregularity for the reasons stated by the CPUC, in this case, the scores were adjusted so that a candidate who was well known by the Executive Director and had less pertinent education and experience than several other candidates was awarded the top score.

The SPB disagrees with the CPUC's implication that the candidates' education and experience were not evaluated as part of the exam score and were "only directly considered during the second component of the selection process, the hiring interview." Our review indicates that the instructions provided to the exam panelists stated:

> "In appraising each candidate's relative qualifications, *give consideration to the breadth, depth, and pertinent experience, and evidence of the candidate's ability* to serve as CEA B Director, Administrative Services Division." [Emphasis added.]

Additionally, the instructions provided to the candidates in completing the SOQ stated:

> "A Statement of Qualifications (SOQ) is a narrative discussion regarding how the applicant's *education, training, experience, and skills* meet the Desirable Qualifications for the position. [Emphasis added.] The SOQ responses are also evaluated for writing ability.
>
> In your SOQ, address how you possess each Desirable Qualification using specific examples of your *education, training, and experience*. This will be the only tool used for determining your final score and rank on the eligibility list for this position…" [Emphasis added.]

The candidate's responses to the SOQ prompts were explicitly based, in part, on the candidate's education and experience, and the exam panelists' scores were based, in

part, on the candidate's breadth, depth, and pertinent experience, making the candidates' education and experience an integral part of the exam score.

Therefore, when viewed in context, the adjustment of exam scores resulting in the top score being awarded to a candidate who is well known by the hiring manager and less qualified than other candidates is highly suspect.

Additionally, the testimony of the other two exam panelists casts further suspicion on the Executive Director's influence over the exam scores. Exam panelist KH stated that he had never scored a CEA exam before, and his request for help went unanswered. Therefore, he followed the Executive Director's lead as she assured him that she was experienced in scoring SOQs. Exam panelist FG testified that he felt pressure in both the exam and hiring interview phases to change his scores to align with the Executive Director's.

While the CPUC HRD found that the same candidate ranked first on the exam when it independently re-scored each candidate's SOQ, it also found that other candidates should have scored as well if not better than the selected candidate when HRD independently re-scored the hiring interview phase.

Based on the totality of the evidence, we find that the Executive Director significantly influenced the exam results and that the panelists adjusted their scores in order to rank her pre-selected candidate at the top, not merely to comply with an administrative procedure.

Finding 1B

The CPUC agrees with our finding that "the exam posting and duty statements [for the CEA] should have included the responsibilities over Human Resources (HR) and Information Technology (IT) at the time of posting." The CPUC, however, appears to have misread the draft report when it asserts that it was not required to submit a concept change with CalHR to add these functions to the position. We did not state that a concept change was required; only that the IT and HR functions were required on the exam posting and duty statement at the time the job was advertised.

The CPUC also acknowledges that it failed to timely submit a CEA concept change to CalHR for both the addition and the subsequent removal of the Audits function under the Deputy Executive Director of Administration.[1] While we understand that the CPUC has now corrected the CEA concept change to reflect the September 2019 removal of the Audits function from the position, the correction was not made until May 2020, eight months later. We also point out that a CEA concept change was sent to CalHR in

[1] The CPUC incorrectly identifies the dates of the concept change submission to CalHR and the effective date of the addition of the Audits function as October 2018 and May 1, 2018, respectively. The actual date that the CPUC submitted the concept change to CalHR was November 2019. The effective date of the transfer of the Audits function under the Deputy Executive Director of Administration was July 2019 with a retroactive salary adjustment effective May 2019.

November 2019 still reflecting that BA supervised the Audit function, which supported the inflated salary, even though the function had been removed two months prior.

Despite the differences addressed above, the CPUC acknowledges that there were irregularities in the processing of this appointment and the other appointments identified in the report. We appreciate that the CPUC recognizes the seriousness of the findings and the gravity of the consequences when the merit system has been compromised, especially at the hands of a high-ranking official. Since the leadership sets the tone for the entire organization, it is particularly significant that the Commission President has expressed the Commission's commitment to protecting the merit system and ensuring that hiring irregularities will not be tolerated.

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

October 5, 2020

Suzanne M. Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose:

The California Public Utilities Commission (CPUC) continues to share your commitment in protecting the merit system as required by the California Constitution ("to ensure appointments and promotions are made under a general system based on merit ascertained by competitive examination.") The CPUC has undertaken a thorough review and investigation of the State Personnel Board's findings from the August 6, 2020, Special Investigation Report (Report). Pursuant to the directive outlined in the Report, the CPUC submits the attached Corrective Action Response (CAR) regarding the status of the CPUC's evaluation of the issues raised in the Report and the steps the CPUC has implemented to correct the non-compliant findings outlined in the Report.

As detailed in the CAR, you will see the CPUC has taken action on the majority of the findings, and further action is underway. The CPUC is confident all corrective action in response to the Special Investigation Report will be completed by December 31, 2020. The CPUC will continue to implement new procedures and controls where needed to ensure that all civil service rules are followed and to ensure protection of the merit system.

Thank you for the opportunity to improve the CPUC's hiring practices. For any questions related to the substance of this letter, please contact Ms. Cris Rojas, Deputy Executive Director of Human Resources, at (916) 936-8004.

Sincerely,

Marybel Batjer, President
California Public Utilities Commission

attachment

The California Public Utilities Commission (CPUC) submits this Corrective Action Response (CAR), which demonstrates the steps the CPUC has implemented to correct the non-compliant findings discovered as a result of the State Personnel Board's Special Investigation Report dated August 6, 2020. All relevant supporting documentation is identified in the description to the findings and attached to this CAR.

CORRECTIVE ACTION RESPONSE

DEPARTMENT: California Public Utilities Commission	BRANCH/DIVISION/PROGRAM: Human Resources Division
CONTACT PERSON (NAME AND TITLE): Ms. Cris Rojas, Deputy Executive Director, Human Resources	CORRECTIVE ACTION RESPONSE DATE: October 5, 2020

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
Finding as stated in the report, by number	Description of 1) completed or planned corrective action(s) and 2) of supporting documentation (if applicable)	Actual or Estimated Completion Date
CPUC Response to SPB Finding 1A.	The CPUC has voided the appointment of the Deputy Executive Director of Administrative Services effective August 26, 2020 based on findings of an unlawful appointment. The employee was given reasons for the findings and informed of his return rights and appeal rights. A copy of the notice provided to the affected employee is attached to this CAR and identified as Attachment 1.	Completed August 10, 2020.
CPUC Response to SPB Finding 1B.	The CPUC Human Resources Division is retraining staff on policy to make sure the correct CEA concept is provided to the California Department of Human Resources (CalHR) before it will run any CEA job advertisement. CEA advertisements need to be approved by the Deputy Executive Director of Human Resources before being placed.	Completed August 6, 2020.
CPUC Response to SPB Finding 2.	After consultation with CalHR, the CPUC has given notice to the 2 Staff Services Manager II (M)s that their appointments will be voided effective October 15, 2020 based on findings of an unlawful appointment for each employee. The employees were given reasons for the findings and informed of their return rights and appeal rights. A copy of the notices provided to each of the affected employees are attached to this CAR and identified as Attachment 2.	Completed September 30, 2020.

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
	The CPUC is developing internal policies that will prevent such unlawful appointments from occurring in the future. No hires will be processed without physical evidence of standard measurement criteria for screening and evaluating all candidates.	To be completed by October 30, 2020.
CPUC Response to SPB Finding 3.	After consultation with CalHR, the CPUC has given notice to the 2 employees on T&D Assignments that their assignments will be terminated effective October 16, 2020 based on findings of irregularity. The employees were given reasons for the findings and informed of their return rights. A copy of the notices provided to each of the affected employees are attached to this CAR and identified as Attachment 3. The CPUC is developing internal procedures that will prevent such irregular assignments from occurring in the future.	Completed October 1, 2020. To be completed by October 30, 2020.
CPUC Response to SPB Finding 4.	The CPUC HR Division is in the process of reviewing the other 17 hires referred to in the Special Investigation Report to ensure the merit system was followed. This review is well under way. If irregularities are found, the CPUC will take appropriate corrective action.	To be completed by November 13, 2020.
CPUC Response to SPB Part B Finding:	The CPUC released a Nepotism Policy in May 2020, along with a requirement for employees to disclose personal relationships. The CPUC's Nepotism policy is consistent with the CalHR 2015 PML regarding anti-nepotism policies. Personal relationships are now tracked and any that pose a potential conflict of interest have been identified and addressed. Please see attachment 4.	Completed May 2020.

FINDING (DEFICIENCY) BY NUMBER	ACTION ITEM(S) ALREADY OR TO BE COMPLETED	TIMEFRAME(S)
CPUC Response to SPB Part B Finding: (continued)	Customized nepotism training is being developed with a private law firm, and all CPUC employees will be trained on its Nepotism Policy on a routine basis, as well as re-training, as required per the Special Investigation Report.	To be completed by December 31, 2020.

CPUC 60-day Response to Special Investigation Report
October 5, 2020
Attachment 1

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 21, 2020

B[redacted] A[redacted]
[redacted]
By email to: [redacted]@gmail.com

ERRATA:

RE: Final Determination Regarding Potential Unlawful Appointment Errata

This letter is to correct a typographical error in the August 10, 2020, letter regarding your unlawful appointment with the CPUC. (See correction in underlined text below.) All other information in the August 10, 2020, letter remains the same.

> After the effective date of your voided appointment, you will return to your former position, <u>Accounting Administrator III</u>, at the California Air Resources Board (CARB).

I regret any inconvenience this may have caused. The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 10, 2020

B[redacted]

RE: Final Determination Regarding Potential Unlawful Appointment

On July 28, 2020, the California Public Utilities Commission (CPUC) notified you that it had learned that your hire to the Career Executive Assignment Level B ("C.E.A. (B)") position effective on March 11, 2019, may be unlawful and that the CPUC was in the process of reviewing this matter. The CPUC has completed its review, and this is to notify you of its final determination regarding your hire.

Based on a review of hiring documents, exam materials, the CEA concept on file with the California Department of Human Resources and the State Personnel Board's June 2020 Draft Special Investigation Report, along with other relevant information, CPUC has determined that your appointment into the C.E.A. (B) position was unlawful due to violation of the good faith appointment requirements under Title 2 of the California Code of Regulations, §243. For all civil service appointments to be valid, CPUC must make, and the employee must accept, the appointment in good faith. The CPUC has determined that your appointment was not made in good faith by the CPUC because the appointment did not comply with all of the requirements under §243 (b) (3), §243 (b) (5) and §243 (b) (7) of the California Code of Regulations, Title 2. These sections require the appointing power to ensure that the position of the appointment has been properly classified, that the intention to employ the selected candidate in the classification, tenure, and location, and under terms and conditions set forth in the appointment documents, and acts in a manner that does not violate the rights and privileges of other persons affected by the appointment, including other eligible candidates.

This determination is based on the following findings:

1. On January 23, 2019, the C.E.A. (B) Director, Administrative Services Division Exam Bulletin was posted with a job description to oversee the budget, fiscal, and management services functions of the CPUC, Administrative Services Division with a final filing date of February 6, 2019. The advertisement and duty statement did not include oversight over the Human Resources (HR) or Information Technology (IT) Divisions.

2. On February 15, 2019, the C.E.A. (B) Director, Administrative Services Division Exam scoring was completed, and an eligibility list was created based solely on the Statement of Qualifications (SOQ) responses related to budget, fiscal, and management services functions. Subsequent hiring interviews were held with the

candidates who scored in the top 3 ranks of the SOQ. The SOQs for the examination and the questions in the hiring interview did not cover the subject areas of HR and IT.

3. On March 11, 2019, you were appointed to the C.E.A. (B) classification overseeing the budget, fiscal, and management services functions of the CPUC, Administrative Services Division.

4. Less than two months after your appointment, on May 1, 2019, the HR and IT Divisions were moved under your authority and your title was changed to Deputy Executive Director. According to the Executive Director, this change was foreseen even before the advertisement for the C.E.A. (B) Director, Administrative Services Division was posted. The additional responsibilities of HR and IT were placed under the scope of your position as Deputy Executive Director without following the requisite civil service requirements of a fair and competitive process. The full scope of duties that should have included the HR and IT responsibilities were not reflected in the job advertisement and the selection process (examination and hiring interview). Since the job advertisement did not include the HR and IT responsibilities, those criteria for evaluation related to the HR and IT functions were not considered during the selection process. Because those added responsibilities to your positions were not included, the advertisement did not accurately reflect the duties of the position and deprived notice to other qualified candidates of the ability to compete.

The CPUC has reviewed your acceptance of the appointment into the C.E.A. (B) position, and it appears that you meet all the requirements outlined under §243(c) of the California Code of Regulations, Title 2. The CPUC has no information that you accepted the appointment in other than good faith, so you are therefore permitted to retain all compensation you received even though the appointment was unlawful per California Code of Regulations (CCR), Title 2, sections §243 (b) (3), §243 (b) (5) and §243 (b) (7).

Because the CPUC has determined that your March 11, 2019 appointment to the C.E.A. (B) position was unlawful, CPUC must take corrective action and your appointment will be voided effective August 26, 2020. Because your appointment is deemed unlawful, your time serving in the C.E.A. (B) position at the CPUC cannot be used to claim as work experience on any employment application with the State of California. After the effective date of your voided appointment, you will return to your former position, Accounting Administrator II, at the California Air Resources Board (CARB). CARB will be notified of your pending return by CPUC.

Per CCR, Title 2, §243.5, you have a right to respond, either verbally or in writing, within fifteen (15) calendar days from the date of this letter to the CPUC. If responding orally, please

contact me by email (cris.rojas@cpuc.ca.gov) or telephone (916-936-8004) to set up a meeting. If in writing, you may address your response to me at cris.rojas@cpuc.ca.gov.

If you do not agree with the determination found in this letter, in addition to your right to respond to the CPUC provided directly above, you have the right to appeal the CPUC's decision to the State Personnel Board (SPB). Such appeal must be received in writing and filed within 30 calendar days from the date of this letter to the SPB. The SPB Appeal/Complaint Form can be found on the SPB website, www.spb.ca.gov.

The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

CPUC 60-day Response to Special Investigation Report
October 5, 2020
Attachment 2

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 29, 2020

K[redacted] G[redacted]

RE: Final Determination Regarding Potential Unlawful Appointment

On July 28, 2020, the California Public Utilities Commission (CPUC) notified you that it had learned that your hire to the Staff Services Manager II (M) (SSM II (M)) position effective on June 1, 2018, may be unlawful and that the CPUC was in the process of reviewing this matter. The CPUC has completed its review, and this is to notify you of its final determination regarding your hire.

Based on a review of hiring package and related documents, the State Personnel Board's Draft June 2020 Special Investigation Report, the CPUC's May 2020 desk audit, along with other relevant information, CPUC has determined your appointment is unlawful due to violation of the good faith appointment requirements under Title 2 of the California Code of Regulations, §243. For all civil service appointments to be valid, CPUC must make, and the employee must accept, the appointment in good faith. An appointment into a civil service position that is not made or accepted in good faith is deemed to be unlawful. The CPUC has determined that your appointment was not made in good faith by the CPUC because the appointment did not comply with all of the requirements under §243 (b) (3), §243 (b) (5) and §243 (b) (7) of the California Code of Regulations, Title 2. These sections require the appointing power to ensure that the position of the appointment has been properly classified, that the intention to employ the selected candidate in the classification, tenure, and location, and under terms and conditions set forth in the appointment documents, and to act in a manner that does not violate the rights and privileges of other persons affected by the appointment, including other eligible candidates.

This determination is based on the following findings:

1. On March 28, 2018, 2 SSM II (M) positions were posted on one Job Opportunity Bulletin with a final filing date of April 11, 2018.

2. A total of 107 candidates applied to this recruitment; however, only 5 candidates were selected for interview. There is no evidence that any standard measurement criteria was used in determining which 5 candidates were selected for interview.

3. On June 1, 2018, you were appointed to the SSM II (M) classification.

4. In May 2020, the Human Resources Division conducted a desk audit and determined that the duties that you performed in your position were not appropriately allocated at the SSM II (M) level. The HR Division determined the duties were reflective of the SSM I (Specialist) classification.

5. Since there is no evidence of any standard measurement criteria when you were selected to interview for the SSM II (M) position, and the desk audit determined that your duties consisted of SSM I (Specialist) work, your hire into the SSM II (M) level did not comply with civil services rules. Your hire into the SSM II (M) level is a misallocation because your duties are reflective of a SSM I (Specialist) level, and the misallocation violated the rights and privileges of other persons affected by the appointment, including other eligible candidates, by depriving them of an opportunity to fairly compete. This violates §243 (b) (7) of the California Code of Regulations, Title 2.

6. Since your responsibilities do not rise to the level of the SSM II (M) classification, this violates §243 (b) (3) and §243 (b) (5) of the California Code of Regulations, Title 2. Section 243 (b) (3), requires the appointing power to ensure that the position of the appointment has been properly classified which is not the case per the May 2020 desk audit discussed above. Section 243 (b) (5) was violated as well because your hire into the SSM II (M) classification was improper. You have been performing duties at the lower level classification of SSM I (Specialist) and did not perform duties in the higher-level classification of the SSM II (M).

Even though we have determined that your appointment into the SSMII (M) position was not made in good faith by the CPUC, your acceptance of the appointment into the SSM II (M) position is presumed to be in good faith because you appear to meet all the requirements outlined under §243(c) of the California Code of Regulations, Title 2. Since the CPUC has no information that you accepted the appointment in other than good faith, you are permitted to retain all compensation you received even though the appointment was unlawful per California Code of Regulations (CCR), Title 2, sections §243 (b) (3), §243 (b) (5) and §243 (b) (7).

Because the CPUC has determined that your June 1, 2018 appointment to the SSM II (M) position was unlawful, CPUC must take corrective action and your appointment will be voided effective 5 p.m. on October 15, 2020. Because your appointment is deemed unlawful, your time serving in the SSM II (M) position at the CPUC cannot be used to claim as experience on any employment application with the State of California. After the effective date of your voided appointment, you will return to your former position, SSM II (S) at the California Air Resources Board (CARB). CARB will be notified of your pending return by CPUC. Please contact CARB's HR Director, Ms. Jennifer Edmond, at (916) 324-2813 to make arrangements for your return.

Per CCR, Title 2, §243.5, you have a right to respond, either verbally or in writing, within fifteen (15) calendar days from the date of this letter to the CPUC. If responding orally, please contact me by email (cris.rojas@cpuc.ca.gov) or telephone (916-936-8004) to set up a meeting. If in writing, you may address your response to me at cris.rojas@cpuc.ca.gov.

If you do not agree with the determination found in this letter, in addition to your right to respond to the CPUC provided directly above, you have the right to appeal the CPUC's decision to the State Personnel Board (SPB). Such appeal must be received in writing and filed within 30 calendar days from the date of this letter to the SPB. The SPB Appeal/Complaint Form can be found on the SPB website, www.spb.ca.gov.

The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 29, 2020

M[redacted]

RE: Final Determination Regarding Potential Unlawful Appointment

On July 28, 2020, the California Public Utilities Commission (CPUC) notified you that it had learned that your hire to the Staff Services Manager II (M) (SSM II (M)) position effective on June 1, 2018, may be unlawful and that the CPUC was in the process of reviewing this matter. The CPUC has completed its review, and this is to notify you of its final determination regarding your hire.

Based on a review of hiring package and related documents, the State Personnel Board's Draft June 2020 Special Investigation Report, the CPUC's May 2020 desk audit, along with other relevant information, CPUC has determined your appointment is unlawful due to violation of the good faith appointment requirements under Title 2 of the California Code of Regulations, §243. For all civil service appointments to be valid, CPUC must make, and the employee must accept, the appointment in good faith. An appointment into a civil service position that is not made or accepted in good faith is deemed to be unlawful. The CPUC has determined that your appointment was not made in good faith by the CPUC because the appointment did not comply with all of the requirements under §243 (b) (3), §243 (b) (5) and §243 (b) (7) of the California Code of Regulations, Title 2. These sections require the appointing power to ensure that the position of the appointment has been properly classified, that the intention to employ the selected candidate in the classification, tenure, and location, and under terms and conditions set forth in the appointment documents, and to act in a manner that does not violate the rights and privileges of other persons affected by the appointment, including other eligible candidates.

This determination is based on the following findings:

1. On March 28, 2018, 2 SSM II (M) positions were posted on one Job Opportunity Bulletin with a final filing date of April 11, 2018.

2. A total of 107 candidates applied to this recruitment; however, only 5 candidates were selected for interview. There is no evidence that any standard measurement criteria was used in determining which 5 candidates were selected for interview.

3. On June 1, 2018, you were appointed to the SSM II (M) classification.

4. In May 2020, the Human Resources Division conducted a desk audit and determined that the duties that you performed in your position were not appropriately allocated at the SSM II (M) level. The HR Division determined the duties were reflective of the SSM I (Specialist) classification.

5. Since there is no evidence of any standard measurement criteria when you were selected to interview for the SSM II (M) position, and the desk audit determined that your duties consisted of SSM I (Specialist) work, your hire into the SSM II (M) level did not comply with civil services rules. Your hire into the SSM II (M) level is a misallocation because your duties are reflective of a SSM I (Specialist) level, and the misallocation violated the rights and privileges of other persons affected by the appointment, including other eligible candidates, by depriving them of an opportunity to fairly compete. This violates §243 (b) (7) of the California Code of Regulations, Title 2.

6. Since your responsibilities do not rise to the level of the SSM II (M) classification, this violates §243 (b) (3) and §243 (b) (5) of the California Code of Regulations, Title 2. Section 243 (b) (3), requires the appointing power to ensure that the position of the appointment has been properly classified which is not the case per the May 2020 desk audit discussed above. Section 243 (b) (5) was violated as well because your hire into the SSM II (M) classification was improper. You have been performing duties at the lower level classification of SSM I (Specialist) and did not perform duties in the higher-level classification of the SSM II (M).

Even though we have determined that your appointment into the SSMII (M) position was not made in good faith by the CPUC, your acceptance of the appointment into the SSM II (M) position is presumed to be in good faith because you appear to meet all the requirements outlined under §243(c) of the California Code of Regulations, Title 2. Since the CPUC has no information that you accepted the appointment in other than good faith, you are permitted to retain all compensation you received even though the appointment was unlawful per California Code of Regulations (CCR), Title 2, sections §243 (b) (3), §243 (b) (5) and §243 (b) (7).

Because the CPUC has determined that your June 1, 2018 appointment to the SSM II (M) position was unlawful, CPUC must take corrective action and your appointment will be voided effective 5 p.m. on October 15, 2020. Because your appointment is deemed unlawful, your time serving in the SSM II (M) position at the CPUC cannot be used to claim as experience on any employment application with the State of California. After the effective date of your voided appointment, you will return to your former position, SSM II (S) at the California Air Resources Board (CARB). CARB will be notified of your pending return by CPUC. Please contact CARB's HR Director, Ms. Jennifer Edmond, at (916) 324-2813 to make arrangements for your return.

Per CCR, Title 2, §243.5, you have a right to respond, either verbally or in writing, within fifteen (15) calendar days from the date of this letter to the CPUC. If responding orally, please contact me by email (cris.rojas@cpuc.ca.gov) or telephone (916-936-8004) to set up a meeting. If in writing, you may address your response to me at cris.rojas@cpuc.ca.gov.

If you do not agree with the determination found in this letter, in addition to your right to respond to the CPUC provided directly above, you have the right to appeal the CPUC's decision to the State Personnel Board (SPB). Such appeal must be received in writing and filed within 30 calendar days from the date of this letter to the SPB. The SPB Appeal/Complaint Form can be found on the SPB website, www.spb.ca.gov.

The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

CPUC 60-day Response to Special Investigation Report
October 5, 2020
Attachment 3

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 30, 2020

P[redacted] B[redacted]

RE: Final Determination Regarding Potential for Inappropriate Training and Development Assignment

On July 28, 2020, the California Public Utilities Commission (CPUC) notified you that it had learned that your Training and Development (T&D) assignment to Public Utilities Regulatory Analyst (PURA) IV position effective on February 19, 2019, may be inappropriate and that the CPUC was in the process of reviewing this matter. The CPUC has completed its review, and this is to notify you of its final determination regarding your assignment.

Based on a review of the hiring package and related documents, the State Personnel Board's Draft June 2020 Special Investigation Report, the CPUC's July 2020 desk audit, along with other relevant information, CPUC has determined your T&D assignment was inappropriately made due to consideration of the requirements under Title 2 of the California Code of Regulations, §439.3(a) which requires the selection process to involve the use of job-related criteria and any other selection instrument or procedure designed to objectively and fairly evaluate and compare the candidates. This renders your assignment not in good faith and therefore invalid.

This determination is based on the following findings:

1. On November 26, 2018, CPUC posted job bulletins for two PURA V positions in the Sacramento area office, with a final filing date of December 10, 2018. Six individuals, including you, applied for these positions.

2. You were screened out of the original recruitment (above) for failure to meet the Minimum Qualifications (MQs) for PURA V.

3. On January 17, 2019, rather than promoting internal candidates who met the minimum qualifications for the appointments, these job bulletins were re-posted to "increase the candidate pool" by allowing for an appointment at either the PURA IV or V level, as well as the acceptance of a Training and Development (T&D) assignment. This re-posting had a final file date of "until filled." The second posting produced three more candidates, making for a candidate pool of nine until it was closed on February 4, 2019.

4. Four candidates, including you, were selected for interviews. The interview questions showed very little relevance to the PURA IV or V classification.

5. You were interviewed on January 24, 2019, for this position, even though the position was still open and being re-advertised to "increase the candidate pool." The job announcement was closed on February 4, 2019. You were offered the position on February 1, 2019.

6. You were selected for a T&D assignment from SSM III to a PURA V, even though compared to two of the other candidates you had much less experience in the highly technical area of utility policy.

7. After a thorough desk audit, it appears you were not in fact working at the level of a PURA V and the job would have been better classified at the Staff Services Manager III level.

In addition to the requirements under Title 2 of the California Code of Regulations, §439.3(a,) the CPUC has determined that your February 19, 2019, assignment to the PURA T&D was inappropriate and not conducted in good faith. Additionally, your assignment is invalid since it resulted in a selection process not based solely on merit and significantly disadvantaged the other candidates. (California Code of Regulations, Title 2, section 243.2 (b).)

CPUC must take corrective action and your assignment will be voided effective October 16, 2020. Because your assignment is deemed invalid, your time serving in the PURA T&D assignment at the CPUC cannot be used to claim as experience on any employment application with the State of California. After the effective date of your voided assignment, you will return to your former position, SSM III, at the California Air Resources Board (CARB). CARB will be notified of your pending return by CPUC. Please contact CARB's HR Director, Ms. Jennifer Edmond, at (916) 324-2813 to make arrangements for your return. You can also reach out to her at her email address, Jennifer.Edmond@ARB.ca.gov.

The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 30, 2020

D[redacted]

RE: Final Determination Regarding Potential for Inappropriate Training and Development Assignment

On July 28, 2020, the California Public Utilities Commission (CPUC) notified you that it had learned that your Training and Development (T&D) assignment to Public Utilities Regulatory Analyst (PURA) III position effective on March 1, 2019, may be inappropriate and that the CPUC was in the process of reviewing this matter. The CPUC has completed its review, and this is to notify you of its final determination regarding your assignment.

Based on a review of the hiring package and related documents, the State Personnel Board's Draft June 2020 Special Investigation Report, the CPUC's July 2020 desk audit, along with other relevant information, CPUC has determined your T&D assignment was inappropriately made due to consideration of the requirements under Title 2 of the California Code of Regulations, §439.3(a) which requires the selection process to involve the use of job-related criteria and any other selection instrument or procedure designed to objectively and fairly evaluate and compare the candidates. This renders your assignment not in good faith and therefore invalid.

This determination is based on the following findings:

1. On November 26, 2018, CPUC posted job bulletins for two PURA V positions in the Sacramento area office, with a final filing date of December 10, 2018. Six individuals, including you, applied for these positions.

2. You were screened out of the original recruitment (above) for failure to meet the Minimum Qualifications (MQs) for PURA V.

3. On January 17, 2019, rather than promoting internal candidates who met the minimum qualifications for the appointments, these job bulletins were re-posted to "increase the candidate pool" by allowing for an appointment at either the PURA IV or V level, as well as the acceptance of a Training and Development (T&D) assignment. This re-posting had a final file date of "until filled." The second posting produced three more candidates, making for a candidate pool of nine until it was closed on February 4, 2019.

4. Four candidates, including you, were selected for interviews. The interview questions showed very little relevance to the PURA IV or V classification.

5. You were interviewed on January 24, 2019, for this position, even though the position was still open and being re-advertised to "increase the candidate pool." The job announcement was closed on February 4, 2019. You were offered the position on February 11, 2019.

6. You were selected for a T&D assignment from SSM II to a PURA IV, even though compared to two of the other candidates you had much less experience in the highly technical area of utility policy.

7. After a thorough desk audit, it appears you were not in fact working at the level of a PURA IV and the job would have been better classified at the Staff Services Manager II level.

In addition to the requirements under Title 2 of the California Code of Regulations, §439.3(a,) the CPUC has determined that your March 1, 2019, assignment to the PURA T&D was inappropriate and not conducted in good faith. Additionally, your assignment is invalid since it resulted in a selection process not based solely on merit and significantly disadvantaged the other candidates. (California Code of Regulations, Title 2, section 243.2 (b).)

CPUC must take corrective action and your assignment will be voided effective October 16, 2020. Because your assignment is deemed invalid, your time serving in the PURA T&D assignment at the CPUC cannot be used to claim as experience on any employment application with the State of California. After the effective date of your voided assignment, you will return to your former position, SSM II (S), at the California Air Resources Board (CARB). CARB will be notified of your pending return by CPUC. Please contact CARB's HR Director, Ms. Jennifer Edmond, at (916) 324-2813 to make arrangements for your return. You can also reach out to her at her email address, Jennifer.Edmond@ARB.ca.gov.

The Human Resources Division is available to assist if you have any questions regarding the substance of this letter. Please contact me at 916-936-8004.

Sincerely,

Cris Rojas

Cris Rojas
Deputy Executive Director, Human Resources
California Public Utilities Commission

CPUC 60-day Response to Special Investigation Report
October 5, 2020
Attachment 4

California Public Utilities Commission

POLICY NUMBER: **03-202005**	EFFECTIVE DATE: **May 19, 2020**
TO: **All CPUC Staff**	REFERENCES: • California Constitution Article VII, Section 1(b) • Government Code Section 12940 • Government Code Section 19050 • Government Code Sections 18500-18502 • California Code of Regulations, Title 2, Section 25 • California Code of Regulations, Title 2, Section 250 • California Code of Regulations, Title 2, Section 11057 • Memorandums of Understanding • California Department of Human Resources (CalHR) Online HR Manual, Section 1204\
POLICY NAME: **Nepotism Prevention**	

PURPOSE AND SUMMARY

It is the policy of the California Public Utilities Commission (CPUC) to operate under a policy of equal opportunity in employment and to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations (California Constitution Article VII, Section 1(b); Government Code Sections 18500-18502; California Code of Regulations, Title 2, Section 250). Nepotism is expressly prohibited in the State workplace because it is antithetical to California's merit-based civil service.

As a State employer, CPUC is required to make employment decisions based upon merit and fitness, and to follow State laws that govern California's merit-based civil service (Government Code Section 19050). Therefore, this policy is established to reinforce management's commitment to fair and impartial employee selection, supervision and evaluation, and to create a fair, merit-based employment environment. The policy is intended to prevent favoritism, preferential treatment, or bias based on personal relationship, in all aspects of the employment relationship.

POLICY

DEFINITION

Nepotism is generally defined as the practice of an employee using his or her influence or power to aid or hinder another in an employment setting because of a personal relationship. Personal relationships for this purpose include, but are not limited to, association by blood, adoption, marriage, and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to the State's prohibition of nepotism. Such relationships may include friendships that involve strong personal commitments similar to family relationships (CalHR Online HR Manual, Section 1204).

PROFESSIONAL AND PERSONAL RELATIONSHIPS

To ensure that the CPUC meets its commitment to fair and impartial employee selection, supervision and evaluation, and to prevent favoritism or bias based on personal relationships, CPUC employees associated by blood, adoption, marriage and/or cohabitation, as well as friendships that involve a close personal relationship outside of work, generally shall not:

1) Work in a small unit in close association with one another;
2) Work for the same supervisor;
3) Have a direct supervisor/subordinate relationship, or
4) Participate in, or attempt to influence, any employment related decisions (including interviewing, hiring, promotions, performance appraisal, disciplinary decisions, etc.) where there is an indirect supervisor/subordinate relationship.

This policy applies to all categories of employees (full-time, part-time, permanent intermittent, retired annuitant, temporary, student, limited–term appointment, volunteer, intern, and consultant) (California Code of Regulations, Title 2, Section 25).

Supervisors and managers should be aware of potentially sensitive situations involving personal relationships within their area of responsibility. It is unlawful to discriminate based on marital status or personal relationship (Government Code Section 12940). However, supervisors and managers may make employment decisions for bona fide business reasons of supervision, safety, security, and/or morale (California Code of Regulations, Title 2, Section 11057). Such reasons include situations where a personal relationship between employees is likely to adversely affect an employee's ability and fitness to perform his/her specific job duties, or when the relationship has an adverse impact on the workplace.

As a State employer, CPUC also has the right to determine how and where to assign staff based on operational needs that include performance, safety and morale in the workplace (States' rights clauses, Memorandums of Understanding). CPUC needs to be informed of personal relationships among employees so as to avoid conflicts of interest and employee moral problems.

CPUC recognizes there may be situations where two individuals who have a personal relationship may appropriately be allowed to work in the same program, Branch or Division without adverse impact. These situations are evaluated on a case-by-case basis.

In addition, an employee must notify the Human Resources (HR) Division Director when he/she becomes aware of any of the following occurring:

1) A personal relationship adversely affects the work of staff in a Branch, or the fair and impartial supervision and evaluation of employees; or
2) Nepotism concerns result from changed circumstances after appointment. Any change where a reasonable person would question the ability of a person with power or influence to act with fairness and impartiality towards a subordinate.

ADDRESSING NEPOTISM CONCERNS

When situations arise that have, or could be perceived as having, an adverse impact on the work of the unit or the staff, workplace safety and morale, or the fair and impartial supervision and evaluation of employees, the issue of nepotism will be addressed as appropriate. If necessary, the HR Division Director will contact the Division Director of the impacted program to identify and discuss appropriate remedies, which may include reassignment of one or both affected employees.

To minimize the likelihood of adverse impacts in the workplace that could result from personal relationships included in the State's general definition of nepotism, CPUC staff will be asked to complete the Nepotism Prevention Policy Form under the following circumstances:

- When the Nepotism Prevention Policy is implemented, all CPUC staff will be notified that they are required to complete the Nepotism Prevention Policy Form and give it to their supervisors;
- All new employees will be required to submit a completed Nepotism Prevention Policy Form before starting work at CPUC (the hiring supervisor will give it to the new employee after the job offer is made and accepted, with instructions to complete it and turn it in); and
- Notification about the policy will be sent to all employees annually, advising that if an employee has any relationship changes that could affect the workplace or the ability to perform specific job duties, he/she will be required to complete the form.

The completed Nepotism Prevention Policy Form shall be signed by the supervisor, and then reviewed and signed by the Division Director if an employee has one or more relatives in CPUC. It should then be submitted to the assigned Classification & Hiring Analyst.

REFERENCES AND RESOURCES

CalHR Online HR Manual, Section 1204
Nepotism Prevention Policy Form

CALIFORNIA PUBLIC UTILITIES COMMISSION
NEPOTISM PREVENTION POLICY FORM

Introduction: It is the policy of the California Public Utilities Commission (CPUC) to ensure equal opportunity in employment and to recruit, hire and assign all employees of merit and fitness, in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the State workplace because it is antithetical to California's merit-based civil service. Hiring supervisors, Branch Managers and Division Directors are responsible for ensuring that employment-related decisions, including selection, supervision and evaluation, are fair, impartial, and based on merit, rather than on personal or family relationships. **Personal relationships include, but are not limited to, association by blood, adoption, marriage and/or cohabitation, and friendships that may involve stronger personal ties than family relationships.**

Directions to Employee: Please complete the applicable sections of this form as directed. You may refer to CPUC's Nepotism Prevention Policy for additional information.

Employee Name:	
Division:	**Supervisor:**
Classification:	**Appointment Date:**

*If you **do not** have relatives (as defined above) employed at CPUC, complete **Section 1**, sign and date this form, and then submit to your supervisor.*

Section 1: ☐ I do not have relatives (as defined above) employed at CPUC, and understand that if this changes during the course of my employment with CPUC, I have a responsibility to report any relationships that may conflict with the Nepotism Prevention Policy, or any other conflicts of interest, to my supervisor.

*If you **do** have relatives (as defined above) employed at CPUC, complete **Section 2**, then list your relatives employed at CPUC in **Section 3**, sign and date this form, and then submit to your supervisor.*

Section 2: ☐ I have one or more relatives (as defined above) employed at CPUC, and understand that further evaluation and determination is required. It is my responsibility to report any conflict with the Nepotism Prevention Policy to my supervisor.

Section 3: Relatives (as defined above) employed at CPUC *(Complete for each relative only if you completed Section 2)*. If you have more than two relatives at CPUC, please attach a separate sheet of paper that includes all of the information required for each relative.

Name:	**Division:**
Relationship:	**Classification:**
Name:	**Division:**
Relationship:	**Classification:**

Employee Signature:	**Date:**

Directions to Supervisor: Please complete Section 4, obtain the Division Director's signature (if applicable), and then submit the completed form to your assigned Human Resources (HR) Analyst.

Section 4: To be completed by the supervisor

☐ I acknowledge that this employee or candidate does not have any relatives employed at CPUC, and understand that if this changes while he/she is under my supervision, I have a responsibility to report any relationships that may conflict with the Nepotism Prevention Policy to the HR Division.

☐ I acknowledge that this employee or candidate has one or more relatives employed at CPUC, but that no direct or indirect subordinate- supervisor relationship exists, and that these employees are not in the same chain of command. Neither employee nor candidate will have authority that will affect terms and conditions of employment for the other, or otherwise conflict with CPUC Nepotism Prevention Policy.

☐ I acknowledge that this employee or candidate has one or more relatives employed at CPUC that will result in a direct or indirect reporting relationship or otherwise conflict with CPUC's Nepotism Prevention Policy. I understand that further evaluation is required, and a determination must be made by the HR Division regarding this employee or candidate.

Directions: If an employee or candidate has one or more relatives at CPUC and the relationship(s) **will result in a direct or indirect reporting relationship or otherwise conflict with CPUC's Nepotism Prevention Policy**, you must provide a statement below, and receive HR approval prior to the candidate's appointment.

Provide a brief statement below explaining:
1) why this employment action is in the State's best interests; and
2) how conflicts of interests and adverse impacts on the Division and CPUC may be mitigated (e.g. reassignment, restructure of chain of command, or recusal from decisions affecting employment for either of these staff or others who may be impacted).

Explanation:

Supervisor's Signature	**Date**

Reviewed by Division Director (*required only if Section 2 marked*)**:**		
Division Director Signature:	**Date:**	☐ **Acknowledged**

Submitted to/Reviewed by HR Director:		
Proposed Alternative:		
HR Signature:	**Date:**	☐ **Approved** ☐ **Denied**