Consumer Protection
And
Enforcement Division

Transportation Enforcement Branch

Report Responsive to Supplemental Report of the 2016-17 Budget Package, Item 8660-001-0412

December 30, 2016

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Introduction

The Legislative Analyst's Office Supplemental Report of the 2016-17 Budget Package, Item 8660-001-0412 states:

"The California Public Utilities Commission shall report by January 1, 2017 on the following: (1) the number of investigators conducting enforcement of household goods carriers, (2) past and current enforcement efforts, (3) planned future enforcement efforts, and (4) options to provide adequate funding for enforcement activities."[1]

Pursuant to Item 8660-001-0412:

1. Current Number of Investigators Allocated to Household Goods Enforcement

The California Public Utilities Commission (CPUC) allocates 24 investigator positions, two Consumer Affairs Representatives and six Supervisors to enforce California statutes and CPUC regulations regarding passenger and household goods carriers, located in the Transportation Enforcement Branch (TEB). TEB also supports a License Section and an Analysis Unit to issue permits, prepare formal documents for a Commission vote, and provide technical analysis to Commissioners and CPUC management. The License Unit allocates 19 staff positions and three supervisory positions to those functions, many of which are deemed Limited-Term or staffed with Retired Annuitants. To ensure proper allocation between the respective funding sources for passenger carriers (Fund 0461) and household goods carriers (Fund 0412), the CPUC tracks and monitors both the work hours and funding codes.

Employees record the specific amount of hours spent on enforcement of household goods and passenger carriers on their respective timesheets. CPUC management monitors and tracks the hours at least monthly over one fiscal year. At the end of each fiscal year (FY), CPUC management develops percentage allocations for each type of work activity, per employee. The CPUC utilizes those percentages as a baseline to estimate staffing and budget allocation for the subsequent FY among the billing codes associated with Fund 0461 and Fund 0412, described in Section 4c, below. Historically, investigators spend about 60-70 percent of total workhours on passenger carrier (PSG) enforcement and 30-40 percent on household goods (HHG) enforcement. Table 1 provides the actual HHG person-years and calculated percentage of total enforcement for FYs 2014-15 and 2015-16.

[1] See: http://www.lao.ca.gov/reports/2016/3493/2016-17-supplemental-report.pdf, page 29.

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TEB STAFF	PERSON-YEAR ALLOCATION	
HOUSEHOLD GOODS	**FY 2014-15**	**FY 2015-16**
Investigators	8.0	7.0
Consumer Complaint Intake	1.0	1.0
Enforcement Supervisory/Manager	1.5	1.0
Licensing/Analysis	2.0	1.0
Licensing Supervisory/Management	0.5	0.5
SUBTOTAL	**13.0**	**10.5**
PASSENGER*		
Investigators	13.0	15.0
Consumer Complaint Intake	1.0	1.0
Supervisor/Manager - Enforcement	4.5	3.5
Licensing/Analysis**	6.0	6.0
Supervisor/Manager	3.5	2.0
SUBTOTAL	**28.0**	**28.5**
BRANCH VACANCIES	4.0	7.0
LEAVES/OTHER ADMIN* **	5.0	5.0
TOTAL AUTHORIZED PYS	**49.0**	**49.0**
* Charter-Party Carriers, Passenger Stage Corporations and Vessel Operators		
**1-2 positions do not count towards total authorized positions.		
*** Timekeeping, all-CPUC training, vacation, sick leave, personnel matters, etc.		

2. Past and Current Enforcement Efforts With Respect to Household Goods Carriers

Consumer Intake: The Consumer Intake staff person receives and records complaints regarding both authorized and unauthorized household goods carriers. In calendar year 2016, the CPUC's Transportation Enforcement Branch (TEB) issued 35 letters to carriers regarding overcharges.[2] As a result of these efforts, TEB secured over $63,500 in overcharge refunds / claims settlements.

Investigations: Investigators initiate cases based on consumer complaints, referrals from law enforcement, TEB's own motion and other sources. In 2016, TEB initiated 110 investigations and completed 164 investigations. TEB's investigative efforts resulted in 19 administrative citations, 80 cease and desist letters, and 16 official notices.

Prosecution: Some cases require escalated enforcement, particularly those that involve an unauthorized HHG carrier that continues to operate after a TEB investigator issues a cease and desist notice and/or a citation. TEB enforcement staff may either prosecute against the carrier through a formal proceeding at the CPUC or recommend the case to local prosecutors. Understaffed local prosecutors typically elect not to litigate transportation enforcement cases in favor of violent crimes with an obvious victim. In 2016, CPUC enforcement staff secured and effected 10 HHG telephone disconnections through the courts, while local prosecutors accepted and litigated four TEB criminal cases against HHG carriers.

3. Planned Future Enforcement Efforts

In 2017, the CPUC will step up activities against household goods carriers operating without active CPUC authority. The CPUC will develop and implement a program to allow investigators to pay a deposit to secure a move with an unpermitted HHG carrier for the purposes of conducting a sting operation. TEB plans to submit the program's fiscal safeguard procedures for review by the CPUC's Fiscal Office by February 15, 2017, and subsequently to the Department of General Services by March 1, 2017. TEB will also request legal resources to develop the CPUC's litigation capacity to prosecute cases against illegal carriers through the courts, independent of city and district attorneys.

4. Options to Provide Adequate Funding for Enforcement Activities

The following provides a brief summary of TEB funding and changes to TEB budget structure in the past few years and identifies several options to provide additional revenues to provide adequate funding for enforcement activities.

[2] All references to calendar 2016 include activities between January 1, 2016 through November 30, 2016.

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TEB regulates two kinds of transportation entities: household goods movers and passenger carriers. Each type of entity is regulated by a different Chapter of the Public Utilities Code and has a different funding source. Fund 0412 – the "Transportation Rate Fund" (TRF) – accrues revenues from household goods movers. Fund 0461 – the "Public Utilities Commission Transportation Reimbursement Account" (PUCTRA) – accrues revenues from common carriers, which also includes the revenues and expenditures associated with regulation of freight rail, which is regulated separately from TEB. The freight rail industry, and thus rail funding and expenditures, is more stable and predictable than transportation. The rail budget equals revenues each year, which means PUCTRA rail funds do not experience the excess revenues typically accrued in PUCTRA transportation funds.

Prior to Fiscal Year (FY) 2013, the CPUC operated with a single Budget Office staff member. After that staff member retired, the CPUC added three additional staff to its Budget Office and made many improvements to the oversight of all its funds. Many of these changes were implemented after a 2013 Bureau of State Audits audit of PUCTRA, which found the financial oversight of the fund lacking.

The improvements made by the CPUC Budget Office since FY 2013 include:

a) **Updated accounting coding to track revenues and expenditures in PUCTRA.** Prior to FY 2014, PUCTRA was segregated into four separate programs in which freight safety and transportation costs were lumped together: "Regulation of Rates", "Service and Facilities", "Licensing" and "Safety". Starting FY 2014, these were streamlined to simply "Transportation Licensing and Enforcement" and "Freight Safety". Revenue accounting codes were also changed to track freight and passenger carrier revenues separately.

b) **Overhauled CPUC Cost Allocation Plan.** Prior to FY 2014, the Cost Allocation Plan had been operating under a methodology where the costs allocated changed each month, dependent on staff costs. For example, if PUCTRA incurred 30% of the CPUC's labor costs in a given month, it incurred 30% of the CPUC's overhead costs. Under the new methodology introduced at the start of FY 2014, the CPUC's Budget Office determined a fixed percentage at the beginning of the Fiscal Year based on budgeted staff positions. This change enabled the Budget Office to more accurately budget for overhead in each fund.

c) **Increased Budget Office oversight of employee staff costs.** The CPUC manages its staff costs by requiring a Home Base Default Coding assignment for each employee, which shows each employee's labor costs and appropriate funding source. Starting FY 2014, this form was required for all new hires, promotions, and transfers. The Budget Office requires CPUC divisions to complete an annual review of the Home Base Default assignment.

d) **Revised CPUC operating budget structure.** Prior to FY 2014, the CPUC structured its operations budget to match its organizational hierarchy, which is divided into divisions, and then into smaller division branches. The Safety and Enforcement Division's budget, which previously housed both PUCTRA and TRF, was not divided further between its funding sources, which were numerous and included both household goods carriers and common carriers. It is important to note that the division could track spending by funding source (by use of the CALSTARs Program Cost Account), but the budget was not divided into these categories. Beginning in FY 2014, the Budget Office changed its format, and provided an operating budget that included funding sources. The significance of the change is that it provided the divisions a more detailed budget that tied operations back to the source of the funds.

e) **Eliminated funding shifts.** A funding shift is when one fund's expenditures are transferred to another fund in order to close the fiscal year within budgeted appropriations. Prior to FY 2014, funding shifts were commonplace at fiscal year-end for many funds, including TRF and PUCTRA. In FY 2014 the Budget Office gave guidance to no longer use them. However, due to over-spending of budgets related to the updated cost allocation plan, they were necessary to move cost allocation costs in FY 2014. In FY 2013, the funding shift from Fund 0412 to other funds was $989,543; in FY 2014 it was $719,916. In FY 2014 the funding shift from other funds to Fund 0461 was $287,467, in FY 2014, the shift to Fund 0461 was $1,341,278. Funding shifts were not utilized in FY 2015 and there are no plans to utilize them in the future.

As the CPUC implemented many of the above changes simultaneously, some unexpected repercussions arose. Budgets created in October 2013 suddenly exceeded budgeted expenditure authority when the new Cost Allocation Plan became effective in May 2014.

In addition to the improvements described above, the TRF report reflects other important issues.

- <u>Low TRF Fund Balance in FY 2014.</u> While multiple likely causes relate to the changes above (change in Cost Allocation Plan, revision of Home Base Default Coding Code Default assignments and the funding shifts done in FY 2014), the fund balance of TRF dropped sharply in FY 2014.

- <u>Decrease in appropriations for TRF.</u> Noting the decreasing fund balance, the Department of Finance decreased the baseline budget by $1 million in FY 2016, which means the operating budget for the TRF decreased by $1 million in 2016 and for each subsequent year. Subsequently, the CPUC reduced program costs funded by the TRF, including household goods activities, and shifted overhead costs to other funding sources, to achieve and maintain the newly-reduced baseline budget level.

- <u>Increase in Cost Allocation costs.</u> The CPUC's overhead costs increased from $30,886,000 in FY 2013 to $45,829,000 in FY 2015, an increase of $14,943,000 or 48.38%. While the TRF only supports about 1-2% of the CPUC's costs, this still reflects an increase of approximately $230,000 per year drawn from the TRF. The increased costs are a result of implementation of improved budgeting practices that attribute costs to CPUC funds based on PY.

- Increase in Pro Rata. From FY 2014 to FY 2015, the Pro Rata (the State's overhead allocation) increased for TRF from $30,179 to $208,096, an increase of $177,917. While this is not a large increase compared to funding shifts in prior years, changes in the current and future years result in a larger impact, given the reduced fund balance. The increased costs are a result of higher overhead costs of the CPUC, calculated and allocated by the Department of Finance.

As the above changes stabilized, it became apparent that TRF cannot sustain itself as-is; the fund balance is insufficient at 12% of current budgeted expenditures. In FY 2015, revenues and expenditures both approximated $2.4 million, causing a low fund balance. Each year, the TRF's expenditures will increase because of salary and benefit adjustments for staff, even if the CPUC incurs no additional program oversight costs. TEB is currently mitigating TRF cost impacts by freezing multiple vacant positions and prioritizing among various enforcement activities with limited resources.

In FY 2017, the CPUC Budget Office projects such increases at approximately $85,000. The TRF will likely be able to absorb those increases for FY 2017 and FY 2018, but will not likely absorb similar adjustments beyond FY 2018. This assumes that the fund does not incur any additional CPUC overhead costs or program costs.

The CPUC is committed to its responsibility to regulate HHG carriers, and is actively working on methods to provide adequate funding to this activity. A consultant report ordered by SB 541 (Hill, 2015), which is due by February 1, 2017, will be evaluating the CPUC's transportation program and identifying critical path program development items. The CPUC is in parallel discussions, as requested by Governor Brown, to examine the viability of a transfer of transportation activities to other departments in California state government. The CPUC believes that the budgeting activities described in this report are essential government practices regardless of future decisions about the program.

To the extent that current sources do not provide adequate funding for the CPUC's planned future enforcement efforts, several options exist. The CPUC could:

- Increase the HHG carrier application fee (currently $500). The CPUC has not increased the application fee in decades.

- Require HHG carriers to renew their permits periodically, similar to the current rules for passenger carriers (e.g., every three to five years). Requiring carriers to renew their permits for a nominal fee would also help address issues other than funding (for instance, when one owner passes away or otherwise ceases to manage the operations, the responsibilities land with a family member or other individual unknown to the CPUC).

- Acquire and invest additional resources to audit carriers' revenues and require carriers to provide copies of their tax returns, either every year or upon renewal, so that staff can verify annual fee payments against reported revenues. In the past, the transportation program systematically reviewed carriers' financial records, and collected underreported fees during a site visit. Currently, TEB lacks adequate staff resources to audit carriers' reported revenues except as part of the investigation that precedes an enforcement action. The lack of a robust audit program increases the likelihood that the CPUC is collecting less in regulatory fees than is required by law. The CPUC could also consider assigning HHG financial audits to the CPUC's Utility Audit, Finance and Compliance Branch, which in turn would need to delay or cancel audits of stationary utilities at current staffing.

- Raise the annual fee above its current level of 7/10 of 1%. Higher fees would ensure an adequate amount of revenue to fund all HHG enforcement efforts. A Spring Finance Letter that attempted to raise fees to 1% was rejected by the California Legislature when proposed in 2016.

- Increase HHG enforcement activities to provide more scrutiny and stronger consumer protection, which could also result in illegal carriers seeking a permit (and thus contributing to user fees). Increasing enforcement efforts, however, requires increased TRF expenditures, which could potentially exacerbate the current TRF funding problems.

- The CPUC currently intends to implement and monitor the proposed HHG carriers' audit program along with the proposed enforcement programs described in Section 3 to determine whether the combined activities result in an adequate and sustainable increase to the TRF.