

Office of Audit Services



Public Agency Review

California Municipal Utilities Association

**Employer Code: 1420
CalPERS ID: 2882910413
Job Number: P13-010**

December 2013



California Public Employees' Retirement System
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December 23, 2013

Employer Code: 1420
CalPERS ID: 2882910413
Job Number: P13-010

California Municipal Utilities Association
David Modisette, Executive Director
915 L Street, Suite 1460
Sacramento, CA 95814

Dear Mr. Modisette:

Enclosed is our final report on the results of the public agency review completed for the California Municipal Utilities Association (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed By Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Board of Governors, California Municipal Utilities Association
Debbie Armstrong, Administrative Manager,
California Municipal Utilities Association
Risk and Audit Committee Members, CalPERS
Gina M. Ratto, Interim General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the California Municipal Utilities Association (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page three of this report.

- Payrates were not listed in a public pay schedule.
- Performance Incentive Pay was not available to employees in the same or closest group or class of employment.
- Agency incorrectly paid member contributions for one employee.
- Payrate and earnings included non-reportable Health and Welfare Compensation.
- Incorrect payrates were reported.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective May 1, 1987 to provide retirement benefits for local miscellaneous employees. By way of its agreement with CalPERS, the Agency agreed to be bound by the terms of its contract, and the Public Employees Retirement Law (PERL). The Agency agreed to make its employees members of CalPERS subject to the provisions of PERL.

As part of the Board approved audit plan for fiscal year 2013/2014, OAS reviewed the Agency's payroll reporting and member enrollment processes for compliance with its agreement with CalPERS. The review period was limited to an examination of sampled employees, records and pay periods from July 1, 2010 through June 30, 2013. On-site fieldwork for this review was conducted from August 14, 2013 through August 16, 2013.

The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: Payrates were not listed in a public pay schedule.

Condition:

The Agency did not have a pay schedule to support payrates reported to CalPERS for the June 2013 pay period. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per CCR section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.
- Identify the position title for every employee position.
- Show the payrate as a single amount or multiple amounts within a range for each identified position.
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually.
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website.
- Indicate an effective date and date of any revisions.
- Be retained by the employer and available for public inspection for not less than five years.
- Not reference another document in lieu of disclosing the payrate.

Recommendation:

The Agency should ensure employee payrates are contained within a publicly available pay schedule that meets all CCR requirements.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make all necessary adjustments, if any, to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20630 (a), § 20630 (b), § 20636 (b) (1), § 20636 (d)
CCR: § 570.5

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2: The Agency incorrectly reported special compensation of Performance Incentive Pay.

Condition:

The Agency incorrectly reported special compensation of Performance Incentive Pay. The special compensation, paid to the Executive Director, was not available to all members in a group or class. Special compensation is not reportable to CalPERS unless it meets all requirements listed in CCR 571 sections (a)(b)(c) and (d).

OAS reviewed the Agency's reported compensation and found that Performance Incentive Pay in the amount of \$20,800 in 2011 and \$20,800 in 2012 was reported for the Executive Director. Since the Performance Incentive Pay was not provided or available to the next closest group or class of employees, the special compensation should not have been reported.

Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, not final settlement pay and not creating an unfunded liability over and above CalPERS actuarial assumptions.

Recommendation:

The Agency should discontinue reporting Performance Incentive Pay to CalPERS and work with CASD to ensure all items reported as special compensation meet the definition of special compensation and are available to employees in the same or closest group or class of employment.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20636 (c) (1), § 20636 (c) (2), § 20636 (e)(1),
CCR: § 571 (a-d)

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3: The Agency incorrectly paid member contributions for one employee.

Condition:

The Agency incorrectly paid member contributions for the Executive Director. Specifically, the Agency paid the entire seven percent member contributions on his behalf. However, the payment of member contributions was not available to any other employee. Thus, the Agency paid member contributions for only one employee, not for all in group or class, or the closest related group of employees. Government Code section 20691 states that notwithstanding any other provision of law, a contracting agency may pay all or a portion of the normal contributions required to be paid by a member. Where the member is included in a group or class of employment, the payment shall be for all members in the group or class of employment. If an individual is not part of a group or class, the payment shall be limited to the amount that the board determines is payable to similarly situated members in the closest related group or class.

Recommendation:

The Agency should immediately stop paying member contributions for the Executive Director.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20691
CCR: § 569

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4: The Agency incorrectly included non-reportable compensation in payrate and earnings.

Condition:

The Agency incorrectly included non-reportable Health and Welfare compensation in reported payrate and regular earnings for three employees. The Agency provided a monthly reimbursement in lieu of participating in the Agency's medical insurance. The Agency over-reported the employees' payrate and earnings by approximately \$833.33 per month. Additional compensation in lieu of participating in the Agency's medical insurance is not exclusively listed and defined as special compensation in the CCR 571(a). Therefore, it is not reportable compensation.

Recommendation:

The Agency should not report Health and Welfare compensation in payrate and earnings to CalPERS.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20630, § 20636 (b) (1), § 20636 (c)(1), § 20636 (c)(6)
CCR: § 571 (a-d)

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5: Incorrect payrates were reported.

Condition:

The Agency reported incorrect payrates in pay period ending date June 30, 2013 for four employees.

- A. The Agency incorrectly reported payrates for three employees that received salary increases effective June 1, 2013. However, the Agency did not report the increase within payrate to CalPERS.
- B. The Agency reported an incorrect payrate for one sampled employee that received a salary increase paid in February 2013. The Agency reported a monthly payrate of \$7,005.52; however, the employee's monthly payrate was \$5,884.67.

Recommendation:

The Agency should ensure salary increases are correctly reported within payrate.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

Criteria:

Government Codes: § 20160, § 20636 (a), § 20636 (b) (1)

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix A. OAS limited the test of transactions to employee samples selected from the Agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original Signed By Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: December 2013
Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Melvin Lanse, CIA, CPA
Kelly Dotters-Rodriguez

APPENDIX A

OBJECTIVES

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OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2010 through June 30, 2013. This review did not include an assessment as to whether the Agency is a "public agency," and expresses no opinion or finding with respect to whether its employees are employed by a public agency.

SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Board of Director minutes and Board of Director resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - Agency ordinances as necessary
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.

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- ✓ Reviewed my/CalPERS Contribution Detail report to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

APPENDIX B

AGENCY'S RESPONSE



CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

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DAVID L. MODISETTE, EXECUTIVE DIRECTOR

December 5, 2013

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RE: Employer Code: 1420
CalPERS ID: 2882910413
Job Number: P13-010

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Dear Ms. Junker:

The California Municipal Utilities Association (CMUA) is in receipt of your November 15, 2013, draft compliance report of CMUA's contract with the California Public Employees' Retirement System (CalPERS). The letter was received in my office on November 22, 2013. I appreciate CalPERS willingness to extend the response date to December 6, 2013. CMUA responds to the draft report as follows:

Finding 1:

Payrates were not listed in a public pay schedule.

Recommendation 1:

The Agency should ensure employee payrates are contained within a publicly available pay schedule that meets all CCR requirements.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make all necessary adjustments, if any, to active and retired member accounts pursuant to Government Code section 20160.

CMUA Response 1:

CMUA concurs in the finding and recommendation. At its next meeting of its governing Board, CMUA will have its board adopt the public pay schedules in accordance with the CCR requirements. CMUA will work with CalPERS to make all necessary adjustments, if any, to active and retired members.

Finding 2:

The Agency incorrectly reported special compensation of Performance Incentive Pay.

Recommendation 2:

The Agency should discontinue reporting Performance Incentive Pay to CalPERS and work with CASD to ensure all items reported as special compensation meet the definition of special compensation and are available to employees in the same or closest group or class of employment.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

CMUA Response 2:

CMUA concurs in the finding and recommendation. CMUA will discontinue reporting of the Executive Director's Performance Incentive Pay to CalPERS. CMUA will work with CalPERS to determine the impact of the incorrect reporting and make the necessary adjustments.

Finding 3:

The Agency incorrectly paid member contributions for one employee.

Recommendation 3:

The Agency should immediately stop paying member contributions for the Executive Director.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

CMUA Response 3:

CMUA concurs in the finding and recommendation. CMUA will cease paying member contributions for the Executive Director and will work with CalPERS to determine the impact of the incorrect reporting and make any necessary adjustments.

Finding 4:

The Agency incorrectly included non-reportable compensation in payrate and earnings.

Recommendation 4:

The Agency should not report Health and Welfare compensation in payrate and earnings to CalPERS.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

CMUA Response 4:

CMUA concurs in the finding and recommendation. CMUA will cease including non-reportable Health and Welfare compensation in reported payrate and regular earnings for three employees. CMUA will work with CalPERS to determine the impact of the incorrect reporting and make any necessary adjustments.

Finding 5:

Incorrect payrates were reported.

Recommendation 5:

The Agency should ensure salary increases are correctly reported within payrate.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

CMUA Response 5:

CMUA concurs in the finding and recommendation. CMUA will ensure salary increases are correctly reported within the applicable payrate. CMUA will work with CalPERS to determine the impact of the incorrect reporting and make any necessary adjustments.

Sincerely,



David L. Modisette
Executive Director