

Office of Audit Services



Public Agency Review

Trinity Public Utilities District

CalPERS ID: 4682249562
Job Number: P12-007

January 2015



California Public Employees' Retirement System
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January 30, 2015

CalPERS ID: 4682249562
Job Number: P12-007

Paul Hauser, General Manager
Trinity Public Utilities District
P.O. Box 1216
Weaverville, CA 96093

Dear Mr. Hauser:

Enclosed is our final report on the results of the public agency review completed for the Trinity Public Utilities District (Agency). Your written response, included as an appendix to the report, does not dispute 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 Young Hamilton

YOUNG HAMILTON, Acting Chief
Office of Audit Services

Enclosure

cc: Board of Directors, Trinity Public Utilities District
Julie Catanese, Budget Officer, Trinity Public Utilities District
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Diane Alsup, Interim Chief, BNSD, CalPERS
Anthony Suine, Interim Chief, CASD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

TRINITY PUBLIC UTILITIES DISTRICT

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
Scope.....	1
Office of Audit Services Review Results	2
1: Payrate - Pay Schedule.....	2
2: Non-Reportable Compensation	5
3: Payrate Increase	6
4: Payrate and Earnings.....	8
Conclusion	9
Objectives	Appendix A
Agency Response	Appendix B

TRINITY PUBLIC UTILITIES DISTRICT

RESULTS IN BRIEF

The primary objective of our review was to determine whether the Trinity Public Utilities District (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 two of this report.

- Payrates reported to CalPERS did not qualify as compensation earnable.
- Non-reportable compensation was incorrectly reported.
- Payrate increase granted to an employee during the final compensation period exceeded the membership classification's average increase.
- Payrate and earnings for two employees were incorrectly 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 July 4, 2004 to provide retirement benefits for local miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2012-13, the OAS reviewed the Agency's payroll reporting and member enrollment processes as related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees' records and pay periods from April 1, 2009 through March 31, 2012. The review objectives and a summary of the procedures performed are listed in Appendix A.

TRINITY PUBLIC UTILITIES DISTRICT

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: Payrates reported to CalPERS did not qualify as compensation earnable.

Condition:

- A. The Agency reported compensation that did not meet the definition of compensation earnable under Government Code Section 20636 and CCR 570.5. Pay amounts reported did not meet the definition of payrate under Section 20636(b)(1) and the Agency's pay schedule did not meet all of the requirements of CCR Section 570.5. Specifically, the pay reported for the following five unrepresented positions: Assistant Office Administrator, Budget Officer, General Manager, Electric Superintendent and Office Administrator did not meet the definition of payrate as they were not included on a publicly available pay schedule. Rather, the compensation and benefits for the employees who worked in these positions were specified in individual employment agreements. The payrate for each Agency position must be listed on a publicly available pay schedule that meets the requirements of CCR Section 570.5 which requires, in part, that the amounts have been approved and adopted by its governing body in accordance with requirements of applicable public meeting laws. Therefore, OAS has determined that the records provided do not meet the definitional requirements of payrates reported for the positions stated above. As a result, the amounts of pay cannot be used when calculating retirement allowances. The Agency should work with CASD and provide any pertinent documentation that can be located to support a determination of the proper payrate for the individuals holding these positions, should any exist.
- B. Additionally, the Agency reported payrates for three unrepresented employees which included salary increases that do not meet the definition of payrate because the amounts were not included on a publicly available pay schedule and were not approved by the Agency's governing body. Effective November 14, 2010, the Agency General Manager authorized a three percent salary increase for the Office Administrator and the Assistant Office Administrator positions, and a \$3,000 annual salary increase for the Budget Officer position. In support of the salary increases, the Agency provided Minutes from a May 13, 2010 board meeting authorizing an annual cost up to \$430,000 to be used by the General Manager to create, fill, and at his discretion to establish starting payrates for an Assistant General Manager position, an Office Administrator position, and an additional Clerk position. However, the Board Meeting Minutes did not specify salary increases for the

TRINITY PUBLIC UTILITIES DISTRICT

three existing unrepresented employees. As a result, the reported payrates for the Office Administrator, the Assistant Office Administrator, and the Budget Officer positions were not approved by the Agency's governing body or included on a publicly available pay schedule as required by Government Code and CCR.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, the definition of payrate must be met, and a member's pay-rate is limited to the amount identified on a publicly available pay schedule. Additionally, according to 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.

Pay amounts reported for positions that do not meet the definition of payrate and do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1). Government Code Section 20636(d) also requires that payrate and special compensation schedules, ordinances, or similar documents must be public records available for public scrutiny. Payrate reported to CalPERS is limited to the amount listed on a publicly available pay schedule. Pursuant to the regulation, when an employer fails to meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

TRINITY PUBLIC UTILITIES DISTRICT

Recommendation:

The Agency should ensure that reported pay is set forth in a publicly available pay schedule and meets the other definitional requirements of payrate under Government Code Section 20636 and CCR Section 570.5.

The Agency should ensure that all employees' payrates are duly approved and adopted by the Agency's governing body in accordance with the requirements of applicable public meeting laws as required by the Government Code and CCR.

The Agency should work with CalPERS Customer Account Services Division (CASD) to ensure that all reported pay amounts meet the definitional requirements of payrate and special compensation, all positions and payrates are listed on a publicly available pay schedule that is available for public scrutiny, and all payrates are paid and reported pursuant to the pay schedule.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

TRINITY PUBLIC UTILITIES DISTRICT

2: Non-reportable compensation was incorrectly reported.

Condition:

The Agency incorrectly reported upgrade straight time pay in payrate and earnings for two employees. This pay should not be reported because it does not meet the definition of payrate because it is not part of the normal monthly rate of pay or base pay of the employee. It also does not meet the definition of special compensation since it is not a payment affirmatively determined to be special compensation by the CalPERS Board and not included in special compensation under CCR Section 571. OAS found that two employees received a 15 percent payrate increase for voluntarily performing work outside of the employees' bargaining group during normal working hours. The Agency's Board adopted a policy during the November 14, 1996 Board Meeting that states employees who voluntarily agree to perform work outside of their bargaining unit are entitled to additional compensation not to exceed 15 percent. In the June 12-25, 2011 pay period, the Agency paid and reported the upgrade straight time for a Utility Worker who performed voluntary work as an Electric Superintendent. The other employee, a Clerk II, performed voluntary work as a Supervisor. However, the Agency did not require these employees to work in an upgraded position. Therefore, the reported upgrade straight time pay did not meet the definition of compensation earnable under Section 20636 and special compensation as provided for in the CCR Section 571. Only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits.

Recommendation:

The Agency should immediately stop reporting upgrade straight time pay in payrate and earnings to CalPERS because it fails to meet the definition of payrate and special compensation in Government Code Section 20636 and the special compensation requirements outlined in CCR Section 571.

The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 571

TRINITY PUBLIC UTILITIES DISTRICT

3: Payrate increase granted to an employee during the final compensation period exceeded the membership classification's average increase.

Condition:

As noted in Finding 1A, the Agency's pay schedules did not include payrates for non-represented employees who worked under individual employment agreements. OAS found that the former Budget Officer, a non-represented employee, received a payrate increase that exceeded the average increase received by other non-represented employees. The Agency informed OAS that each non-represented employee separately negotiated his or her contract and is not considered to be part of a group or class of employment. In the pay period beginning June 27, 2010, the former Budget Officer received a 15 percent salary increase to a new monthly payrate of \$7,241.39. OAS compared the former Budget Officer's payrate increase to the payrate increases received by the Agency's other non-represented employees. OAS found that two non-represented employees received a 4.395 percent increase, and another non-represented employee received a seven percent payrate increase, effective also in pay period beginning June 27, 2010.

OAS found that Board Minutes dated June 11, 2009 and July 8, 2010 specify varied percentage salary increases from zero percent up to 15 percent that were granted to unrepresented employees. (See the following Exhibits).

Exhibit A
June 11, 2009 Board Minutes

Position Title	Effective Date	Salary Increase Percentage
General Manager	July 2009 first payroll period	3.26 percent
Electric Superintendent	July 2009 first payroll period	6.22 percent
Office Supervisor	July 2009 first payroll period	0.00 percent
Budget Officer	July 2009 first payroll period	3.51 percent
Executive Assistant	July 2009 first payroll period	4.74 percent

TRINITY PUBLIC UTILITIES DISTRICT

Exhibit B
July 8, 2010 Board Minutes

Position Title	Effective Date	Salary Increase Percentage
Electric Superintendent	June 27, 2010	4.395 percent
Office Supervisor	June 27, 2010	4.395 percent
Executive Assistant	June 27, 2010	7 percent
Budget Officer	June 27, 2010 through first pay period in October 2010	15 percent

The former Budget Officer retired on November 1, 2010. OAS determined that the Budget Officer's payrate increase effective in the pay period beginning June 27, 2010 exceeded the increases for other non-represented employees. Pursuant to Section 20636 (e)(2), increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the Agency for all employees who are in the same membership classification. Therefore, in this case, the increase discussed above should only have been reported up to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification. Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits.

Recommendation:

The Agency should work with CASD to determine the impact of any incorrect reporting and determine what adjustments are needed to correct any improperly reported amounts. To the extent that amounts of pay were improperly included in the calculation of any retirement allowance afforded individuals who have already retired, a correction must be made pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570, § 572

TRINITY PUBLIC UTILITIES DISTRICT

4: The Agency incorrectly reported payrate and earnings for two employees.

Condition:

The Agency incorrectly added and reported reimbursements for medical premium contributions in payrate and earnings for two sampled unrepresented employees. OAS verified that the Agency's Board approved increasing all unrepresented employees' annual salary by \$2,200.00 or the equivalent of \$183.33 per month as a reimbursement for medical premium contributions, effective January 1, 2008. OAS noted that the two sampled unrepresented employees received the payrate increase. Neither payrate nor special compensation under Government Code Section 20636 includes reimbursements for medical premium contributions. Such payments don't constitute payrate because the pay is not for services rendered on a full-time basis during normal working hours pursuant to a publicly available pay schedule but rather for reimbursement of medical premium contributions. Further, such payments do not constitute special compensation because they are not compensation for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions, and are not payments affirmatively determined to be special compensation by the Board or included under CCR Section 571. As such, the increased pay should not have been reported to CalPERS for retirement purposes.

Recommendation:

The Agency should discontinue reporting non-reportable compensation in payrate and earnings.

The Agency should work with CASD to make necessary adjustments to any and all similarly situated active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 571

TRINITY PUBLIC UTILITIES DISTRICT

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, of California Code of Regulations.

Respectfully submitted,

Original Signed By Young Hamilton
YOUNG HAMILTON, CPA, CIA, CISA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Terry Heffelfinger, Auditor
Nuntawan Camyre, Auditor

TRINITY PUBLIC UTILITIES DISTRICT

APPENDIX A

OBJECTIVES

TRINITY PUBLIC UTILITIES DISTRICT

OBJECTIVES

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

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.) 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 April 1, 2009 through March 31, 2012. 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 the Agency is a public agency or 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
 - Agency Board minutes and Agency Board 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 including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - 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.

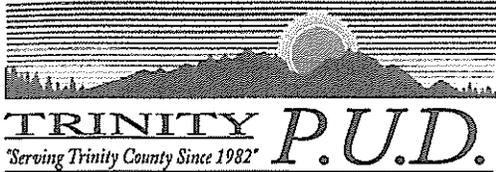
TRINITY PUBLIC UTILITIES DISTRICT

- ✓ Reviewed CalPERS reports 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 unlawful employment occurs.
- ✓ 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.

TRINITY PUBLIC UTILITIES DISTRICT

APPENDIX B

AGENCY RESPONSE



January 13, 2015

Ms. Phyllis Miller, Acting Chief
California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, California 94229-2701

Re: Draft CalPERS Audit – Trinity Public Utilities District Response

Dear Ms. Miller:

As you are aware, the Trinity Public Utilities District ("TPUD" or "District") has received the draft CalPERS audit of the District dated December 8, 2014. Following my letter requesting added time to enable the TPUD Board to review and consider the audit and approve a response, your office granted additional time until January 20th for that purpose.

The District has completed a review of the draft audit findings and recommendations. Based on this review I have been authorized by the District Board of Directors to provide the attached comments on the draft audit based on the information provided. Additional information or modified audit findings and recommendations could change the District's responses, but the attached comments represent the TPUD's position on the draft audit based on our current understanding of the facts and application of the Public Employees' Retirement Law (PERL), and implementing regulations.

We will look forward to receiving the final audit report for review and consideration, and to thereafter meeting and conferring with appropriate Cal PERS representatives to discuss how to proceed to address related issues. In the meantime, if there are questions, please feel free to contact me.

Original Signed By Paul Hauser -

PAUL HAUSER, General Manager

Attachment: TPUD Response to Draft CalPERS Audit

JMU/ge

**TRINITY PUBLIC UTILITIES DISTRICT
RESPONSE TO
CALPERS DRAFT AUDIT
January 12, 2015**

CalPERS Draft Audit Summary

The Office of Audit Services (OAS) has made the following draft audit findings for Trinity Public Utilities District (TPUD) review and comment:

- Certain payrates reported to CalPERS did not qualify as compensation earnable.
- Certain non-reportable compensation was incorrectly reported.
- A payrate increase granted to an employee during the final compensation period exceeded the membership classification's average increase.
- Certain payrates and earnings for two employees were incorrectly reported.

General TPUD Draft Audit Comment

As a general comment, the District has conducted employee compensation management and CalPERS contract administration in good faith and in substantial compliance with known requirements, both during the period of time audited and thereafter. However, TPUD is willing and intends to work with CalPERS to make appropriate technical corrections and adjustments that may be required as a result of this audit.

It should be noted that some of the regulations defining key audit terms, such as what constitutes "compensation earnable" for purposes of determining employee pay determining PERL retirement benefits, were adopted by the State of California as late as August of 2010, but seem to have been applied retroactively for audit purposes. For example, Title 2, California Code of Regulations (CCR) Section 570.5, addressing "Requirement for a Publicly Available Pay Schedule," was made operative August 8, 2011, but seems to have been applied back to April of 2009 for audit purposes.

Specific Draft Audit Findings & Recommendations Comments

Draft Audit Finding #1: Certain payrates reported to CalPERS did not qualify as compensation earnable.

Response to Finding #1: The Draft CalPERS Audit statement of applicable "Conditions" appears generally to be correct factually. However, as discussed with CalPERS representatives in similar recent CalPERS proceedings involving a former District employee,

the TPUD Board of Directors and its management team have conducted compensation CalPERS contract administration in a good faith and transparent fashion.

Although the "publically available pay schedule" requirements of CCR 570.5, as made operative in August of 2011, define the public availability requirements in a specific manner for which there may have been inadvertent technical oversights since that time, both before and since enactment of that administrative code section the TPUD Board has approved the TPUD General Manager's compensation in a public and transparent way, and has publically authorized the General Manager to negotiate other TPUD employee compensation, all based on Board actions taken consistent with the Ralph M. Brown Act (i.e., the California "Open Meeting Law").

Further, all employees whose compensation have been cited in the Draft Audit as not conforming to PERL or the CalPERS contract, have been memorialized in written contracts that have been available for public review and scrutiny. Additionally, when the requirement of listing and publically posting employee compensation was brought to the TPUD's attention by CalPERS representatives in 2012 such a listing was immediately prepared.

To the extent required, and as permitted by applicable state law, the TPUD Board of Directors will ratify the affected District employees' payrates for the periods in question and direct District staff to publish an updated pay schedule meeting all of the requirements of CCR Section 570.5. The District will meet and confer with appropriate CalPERS Division representatives as the TPUD works to promptly accomplish this.

Draft Audit Finding #2: Certain non-reportable compensation was incorrectly reported.

Response to Finding #2: The District does not dispute the factual representations stated in the Draft CalPERS Audit report concerning the District's reporting of upgraded straight time pay. The subject reporting commenced before enactment of CCR Section 571 (b), establishing a more detailed and new definition of "special compensation," in August of 2011, and has continued to date based on the District's understanding that the subject amendment to CCR Section 571 (b) would only apply prospectively to subsequent pay changes. To the extent the subject straight time pay does not constitute "compensation earnable" under PERL the District inadvertently misreported this.

The District will stop reporting upgrade straight time pay in payrate and earnings to CalPERS where it does not meet the definition of payrate and special compensation in Government Code Section 20636 and the special compensation requirements of CCR Section 571, to the extent applicable for the audit time period. The District will also meet and confer with CASO concerning appropriate adjustments to active and retired member accounts pursuant to Government Code Section 20160, and related potential refunds and credits associated with member and District overpayments to CalPERS.

Draft Audit Finding #: A payrate increase granted to an employee during the final

compensation period exceeded the membership classification's average increase.

Response to Finding #3: The District does not dispute the factual representations stated in the Draft CalPERS Audit report concerning the District's payrate increase to a former employee in 2010 during that employee's final compensation period, which exceeded the average payrate increases of other non-represented District employees. To the extent that this was inconsistent with Government Code Section 20636 and related regulations in determining compensation earnable, and misstated resulting retirement benefits for the affected employee, this was based on the District's good faith but mistaken effort to comply with PERL.

The District will work with CASD to determine the impact of any incorrect reporting and determine what corrective actions should occur to address improperly reported compensation amounts.

Draft Audit Finding #4: Certain payrates and earnings for two employees were incorrectly reported.

Response to Finding #4: The District does not dispute the factual representations stated in the Draft CalPERS Audit report concerning the District's addition and reporting of reimbursements for medical premium contributions in payrate and earnings as stated.

To the extent that this was inconsistent with Government Code Section 20636 and CCR Section 571 this was based on the District's good faith effort to comply with PERL. Such reporting of non-reportable compensation will be discontinued, and the District will work with CASD to make account adjustments and effect overpayment credits or refunds as determined appropriate.