Office of Audit Services

Public Agency Review

Riverside County Transportation Commission

CalPERS ID: 1431537449

September 2014

Job Number: P13-037

California Public Employees' Retirement System
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September 19, 2014

CalPERS ID: 1431537449
Job Number: P13-037

Ann Mayer, Executive Director
Riverside County Transportation Commission
P. O. Box 12008
Riverside, CA 92502

Dear Ms. Mayer:

Enclosed is our final report on the results of the public agency review completed for the Riverside County Transportation Commission (Agency). Your written response, included as an appendix to the report, indicates disagreement with Findings 1-3. We appreciate the additional information regarding Findings 1-3. As a result, we have removed Finding 3 from the report. However, after consideration of the information for Findings 1 and 2, our recommendations remain as stated 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 Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: Board of Commissioners, Riverside County Transportation Commission
Michele Cisneros, Controller, Riverside County Transportation Commission
Beth Gutierrez, HR Administrator, Riverside County Transportation Commission
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

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RIVERSIDE COUNTY TRANSPORTATION COMMISSION

RESULTS IN BRIEF

The primary objective of our review was to determine whether Riverside County Transportation Commission (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.

- Pay schedule did not meet all the requirements of the CCR Section 570.5.
- Special compensation was incorrectly reported.

OAS selected one employee subject to the Public Employees' Pension Reform Act of 2013 (PEPRA). However, there were no issues identified for this employee.

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 September 3, 1977 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 2013-14, the OAS reviewed the Agency's payroll reporting and member enrollment processes as related to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from February 10-11, 2013. The review objectives and a summary of the procedures performed are listed in Appendix A.

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The pay schedule did not meet all the requirements of the CCR.

Condition:

The Agency's pay schedule was not duly approved and adopted by its governing body. The Agency Board of Commissioners (Board) approved the Agency's budgeted amount for employee salaries and fringe benefits. However, the Agency's pay schedule listing the employee positions and payrates in place during the review period of June 20, 2013 was approved by the Executive Committee instead of the Board.

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, a member's pay rate is limited to the amount identified on a publicly available pay schedule. 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 pay rate 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 pay rate.

Pay amounts reported for positions that 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).

Recommendation:

The Agency should ensure that all employees' payrates reported to CalPERS are included in a pay schedule that meets all of the CCR requirements.

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

Criteria:

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

2: The Agency incorrectly reported special compensation.

Condition:

Although statutorily allowed, the Agency incorrectly reported the value of Employer Paid Member Contributions (EPMC). Specifically, the Agency paid seven percent EPMC for employees hired on or after November 28, 2003 which was in accordance with the written labor policy. However, the Agency reported eight percent EPMC as special compensation to CalPERS. As a result, the Agency incorrectly reported special compensation (the value of EPMC) for these employees.

Additionally, the Agency paid and reported eight percent EPMC for employees hired before November 28, 2003 as stipulated in its written labor policy. However, the resolution filed with CalPERS specified the Agency would pay and report seven percent EPMC for employees. The Agency has not submitted an updated resolution supporting the value of EPMC as approved in its written labor policy.

Recommendation:

The Agency should ensure it pays and reports special compensation of EPMC as stipulated by its written labor policy. Additionally, the Agency should provide CalPERS an updated resolution.

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(c)(1), § 20636 (c)(4), § 20691
CCR: § 569, § 571

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 Phyllis Miller
PHYLLIS MILLER, CPA, CIA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Diana Thomas, CIA, CIDA, Manager
Jose Martinez, Auditor
Antonio Madrigal Jr., Auditor

APPENDIX A

OBJECTIVES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

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 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 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 Commission minutes and Agency Commission 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.

- ✓ 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 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 RESPONSE

Note: The City provided an attachment to the response that was intentionally omitted from this appendix. Additionally, the names of individuals mentioned in the Agency's response were intentionally omitted from this appendix.

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4080 Lemon Street, 3rd Floor • Riverside, CA 92501
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Riverside County Transportation Commission

July 31, 2014

California Public Employees' Retirement System
Margaret Junker, Chief Office of Audit Services
PO Box 942701
Sacramento, CA 94229-2701

Employer Code: 1155
CalPERS ID: 1431537449
Job Number: P13-037

Dear Ms. Junker:

The Riverside County Transportation Commission (Commission) is responding to the June 23, 2014 draft compliance report (Draft Report) by the California Public Employees' Retirement System's (CalPERS) compliance review of Commission payroll reporting and member enrollment processes for pay periods July 1, 2010 through June 30, 2013.

The Commission appreciates the efforts of Office of Audit Services (OAS) in performing its compliance review and the opportunity to comment on the Draft Report. Although our written response was due July 11, 2014, the Commission was graciously given an extension until July 31, 2014 to provide this response. We thank you for granting us this additional time to prepare our response.

As detailed below, we respectfully disagree with Findings 1, 2 and 3 and the related recommendations. It is our hope that this response will provide you with additional information that will change OAS' determinations with respect to these findings. As such, we respectfully request that you review this response with care and that you consider revising the Draft Report as we request prior to issuing the final compliance report.

Findings, Recommendations and the Commission's Response

FINDING 1: THE PAY SCHEDULE DID NOT MEET ALL THE REQUIREMENTS OF THE CALIFORNIA CODE OF REGULATIONS (CCR).

Commission's Response:

The Commission disagrees with Finding 1. The Draft Report concludes that the Commission's "pay schedule was not duly approved and adopted by its Board." It further concludes that the Commission's practice of having its Executive Committee approve the pay schedule is not consistent with paragraph (a)(1) of Section 570.5 of the California Code of Regulations (Section 570.5) which specifies that the pay schedule must be "duly approved and adopted by the employer's governing body in accordance with the requirements of applicable public meeting laws."

The Commission's Administrative Code complies with the letter of the law and all Brown Act requirements. The full Commission governing body has vested its full authority and ability in the Executive Committee on personnel matters and can also appeal any decision made by the Executive Committee. Given that the decision by our Executive Committee on May 14, 2008 to approve the pay schedule was not appealed by the full Commission governing body demonstrates that the pay schedule was duly approved and adopted by the Commission's governing body. This is consistent with the Administrative Code. Specifically, the Commission's Administrative Code Section 3.(a) Executive Committee, pages 19 - 20 states *"The Executive Committee shall oversee staff functions; recommend staff positions, job descriptions and salaries; appoint, contract with and determine the compensation of the Executive Director."*

Further, the Commission's Administrative Code, page 20 states that *"Decisions of the Committee shall be final unless a member of the Commission, within five (5) days of the date of the decision, requests that the decision be placed on the agenda of the next regular Commission meeting for reconsideration."*

The Draft Report suggests that the preceding procedure does not constitute approval by the governing body of the Commission. However, this is an erroneous conclusion. Paragraph (a)(1) of Section 570.5 merely requires that the pay schedule be adopted by the employer's governing body *in accordance with the requirements of applicable public meetings laws*. It is not a multi-element requirement. Rather, it simply requires that the governing body's approval of a pay schedule be done in a manner which is consistent the Brown Act. Nothing in Section 570.5 or the Public Employees' Retirement Law (PERL) prohibits the governing body of an employer from approving a pay schedule by consent which is what takes place with the Commission. The Executive Committee holds its meetings in accordance with the Brown Act and the pay schedule in place during the review period encompassing June 30, 2013 was approved in a public meeting of the Executive Committee. As such, the pay schedule was available for public review and comment prior to its adoption by the Executive Committee. Further, the power conferred upon the Executive Committee by the governing body of the Commission is such that decisions made by the Executive Committee, in meetings held in compliance with the Brown Act, are binding upon the governing body of the Commission unless a decision by the Executive Committee is placed on the agenda of the governing body of the Commission by request of one of its 34 members within five days of the decision. Therefore, in the absence of a challenge by any member of the governing body of the Commission, the Executive Committee acts on behalf of the governing body of the Commission with respect to personnel matters, including adoption of the Commission's pay schedule.

Notwithstanding the Commission's position that its pay schedule was adopted in accordance with Section 570.5, including paragraph (a)(1), the Commission has determined that it is in its best interest to ensure that the pay schedule is affirmatively approved by the governing body of the Commission. Accordingly, the Commission has included the annual pay schedule in the annual fiscal year (FY) budget as an appendix beginning with FY 2014/15 Budget. The FY 2014/15 Budget was presented at a public hearing on June 11, 2014 and adopted.

On the basis of the foregoing, we respectfully request that CalPERS eliminate Finding 1 of the Draft Report.

***FINDING 2:* THE AGENCY INCORRECTLY REPORTED EPMC.**

Commission's Response:

The Commission disagrees with Finding 2. The Draft Report concludes that while the Commission's resolution adopting the employer paid member contribution benefit of Government Code Section 20691 (EPMC) reflected an EPMC of seven (7) percent, its reporting of the EPMC for employees hired on or after November 28, 2003 (New Employees) and the payment and reporting of the EPMC for employees hired prior to November 28, 2003 (Current Employees) was incorrect. Specifically, the Commission paid an EPMC of seven (7) percent but reported an EPMC of eight (8) percent for New Employees, while it paid and reported an EPMC of eight (8) percent for Current Employees. However, the Draft Report acknowledges that the payment an EPMC of seven (7) percent for New Employees and the payment and report of an EPMC of eight (8) percent for Current Employees was consistent with the Commission's written labor policy.

Government Code Section 20691 permits an employer to pay all or a portion of the normal member contributions required to be paid by a member. It further provides that the payments "shall be reported simply as normal member contributions and shall be credited to member accounts." Further, unlike other provisions of PERL, including

Government Code Sections 20903 and 20965, Section 20691 does not require any action by the employer in order to implement the EPMC. This makes sense given that an employer's payment of the EPMC does not change the character of the normal member contribution.

Based on the preceding, the Commission believes it has reported and paid the EPMC as it understood it to the best of its knowledge and consistent with its written policies and resolutions. In fact, our records suggest that the discrepancy between the Commission's EPMC resolution on file with CalPERS and the amount of the EPMC paid and/or reported to CalPERS was due to a misunderstanding of the process that led up to the amendment of the Commission's CalPERS retirement contract in 2002. The Commission's CalPERS retirement contract was amended at that time to change the retirement formula from 2.0% at 55 to 2.7% at 55, which also increased the normal member contribution from seven (7) percent to eight (8) percent. It was the Commission's understanding at that time that its EPMC resolution would automatically adjust with the amendment of its CalPERS retirement contract such that it would be obligated to report an EPMC of eight (8) percent. However, the payment of the EPMC would be covered entirely by the Commission for Current Employees while one (1) percent of the EPMC would be covered by New Employees consistent with the Commission's written labor policy. Nothing in the correspondence and guidance received by the Commission from CalPERS in connection with the amendment of the Commission's CalPERS retirement contract suggested that the preceding was incorrect.

Notwithstanding the preceding misunderstanding, the discrepancy between the Commission's EPMC resolution on file with CalPERS and the amount of the EPMC paid and/or reported to CalPERS did not cause any detriment to Commission employees or to CalPERS because the correct contributions, regardless of the source, were remitted to CalPERS and the amount of EPMC paid by the Commission was consistent with its written labor policy as acknowledged in the Draft Report. Thus, we do not believe that a correction is merited.

More importantly, it is not appropriate for the Commission to provide an updated resolution to reflect the EPMC in place during the period covered by the Draft Audit as noted in the "Recommendation" to Finding 2 because the Commission has been in the process of phasing out the EPMC for all classic members, regardless of hire date, since July 11, 2013. In fact, in accordance with Resolution No. 14-009, the EPMC will be eliminated effective July 9, 2015.

On the basis of the foregoing, we respectfully request that CalPERS eliminate Finding 2 of the Draft Report.

Finding 3: **The Agency unlawfully employed a retired annuitant.**

Commission's Response:

The Commission disagrees with this finding. During the period in question, the FY 2010/11, the provisions of Government Code Section 21224 pertaining to the rate of pay of a retired annuitant appointed pursuant to said section were as follows: "the rate of pay for the employment [of a retired annuitant] shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties." The provisions requiring that the rate of pay be reduced to a hourly rate by a factor of 173.333 did not apply until June 27, 2012 when SB 1021 amended Section 21224, in part, to provide the following with respect to the rate of pay of a retired annuitant: "[t]he compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal a hourly rate."

Therefore, it is not correct for the rate of pay received by . to be measured against the provisions of Section 21224 as they existed *after* employment pursuant to Section 21224 commenced. Rather, the actual pay received by in light of the 960 hour limitation, must be measured against the rate of pay for "employees performing comparable duties." If the preceding comparison is utilized, it is clear that the rate of pay received by was in compliance with the provisions of Section 21224 as they existed during FY 2010/11.

Furthermore, the Commission disagrees with the proposed recommendation for finding 3 as it is not possible to take further action with respect to the Commission's employment of in light of death on May 5, 2014.

Lastly, please be aware that the Commission no longer has retired annuitants working at the Commission. However, should the Commission determine that it is necessary to employ the specialized skills of a retired annuitant at some point in the future it will ensure that it complies with all applicable rules governing the employment of retired annuitants.

On the basis of the foregoing, we respectfully request that CalPERS eliminate Finding 3 of the Draft Report.

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In closing and on the basis of the preceding, we respectfully request that CalPERS reconsider its findings and recommendations with respect to Findings 1, 2 and 3. We thank you for the opportunity to submit this written response and we look forward to working with OAS, Customer Account Services Division and Benefit Services Division to ensure that the final recommendations and the implementation of said recommendations are not only appropriate but equitable.

Sincerely,

Anne Mayer
Executive Director

Attachment: Administrative Code

cc: Jose Martinez, Field Auditor, CalPERS
Michele Cisneros, Finance Manager/Controller, RCTC
Beth Gutierrez, Human Resources Administrator, RCTC