

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division

RESOLUTION TL-19095

December 18, 2008

RESOLUTION

RESOLUTION ADOPTING LEVEL OF PUBLIC UTILITIES
COMMISSION TRANSPORTATION REIMBURSEMENT ACCOUNT
FEES FOR FISCAL YEAR 2008-09.

SUMMARY

This resolution sets the Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees for passenger stage corporations, charter-party carriers of passengers, vessel common carriers, for-hire vessel operators, commercial air operators, railroad corporations, and pipeline corporations for the period July 1, 2008 to June 30, 2009. It also defines "charter bus" for purposes of collecting PUCTRA fees and renewal application fees from charter-party carriers.

BACKGROUND

Public Utilities Code Section 421(a) states:

"The commission shall annually determine a fee to be paid by every passenger stage corporation, charter-party carrier of passengers, pipeline corporation, for-hire vessel operator, common carrier vessel operator, railroad corporation, and commercial air operator and every other common carrier and related business subject to the jurisdiction of the commission, except as otherwise provided in Article 3 (commencing with Section 431 of this chapter and Chapter 6 (commencing with Section 5001) of Division 2."

The Commission set the PUCTRA fees for fiscal year 2007-08 as follows:

CLASS	FEE
Passenger stage corporations and charter-party carriers	¼ of 1% of gross revenue plus \$10 quarterly fee or \$25 annual fee
Vessel common carriers	½ of 1% of gross revenue plus \$10 quarterly fee or \$25 annual fee
For-hire vessel operators	\$25 annual fee
Commercial air operators	\$25 annual fee
Railroad corporations: Class I: Burlington Northern Santa Fe Union Pacific Class II and III (shortline)	\$1,441,943.80 \$3,532,776.20 0.21% of gross revenue, minimum of \$500 each
Pipeline corporations	3/100 of 1% of gross revenue

The Commission was given authority in the 2007-08 budget to hire five additional investigators for the passenger carrier enforcement program. The Commission had sought the positions because it believed a greater enforcement presence at the state's major airports was necessary to detect and prosecute carriers that were operating outside the law. There were reports of unlicensed carriers, particularly operators of limousines and other small vehicles, disrupting ground transportation services at the airports and presenting a potential safety hazard to the traveling public. The Greater California Livery Association (GCLA), a trade organization representing many of the state's limousine operators, supported the Commission's request. In so doing, the GCLA recognized that its members and other passenger carriers would be required to pay a higher PUCTRA fee to pay for the additional positions.

The Commission was aware that the hiring process for the additional staff would not be completed until well into the fiscal year, so the PUCTRA fee was not increased for 2007-08. The additional investigators are now in place, however. The PUCTRA fee therefore needs to be adjusted upward to cover the new positions and to maintain a prudent reserve in the PUCTRA fund.

In the discussions leading up to the approval of the Commission's budget request, there was an understanding among the parties concerned that the additional investigators would be used primarily to enforce the law with respect to the operation of small vehicles at airports. Further, the carriers that operate those vehicles would be the ones who would have to pay the associated costs of

funding the positions. It was generally agreed that for purposes of assessing a higher PUCTRA fee, "small vehicle" would be defined as any vehicle that seats up to 15 passengers, including the driver. The level of fee discussed was up to 1/3 of 1% of revenue.

Consistent with these discussions, Staff recommends that we establish 1/3 of 1% of revenue as a "small vehicle fee" and maintain the fee at 1/4 of 1% on all other carrier revenue. It further recommends that the increase be made effective January 1, 2009. This will make calculation of the fees easier for the many carriers who pay on an annual basis in January (those with yearly revenue of \$100,000 or less). It will also enable the Commission to make the necessary programming adjustments to its computer system to implement the new fee structure.

The fee increase should apply, in Staff's view, to the operations of both charter-party carriers and passenger stage corporations (PSCs). Staff notes that PSCs often use small vehicles, particularly vans, to conduct airport transportation services. It reports that many PSCs are now providing these services using owner-operators rather than company-owned vehicles operated by employee-drivers. The owner-operators (referred to as "sub-carriers" under Commission regulations) are required to hold their own charter-party authority. The increased use of owner-operators has placed an additional enforcement burden on the staff to ensure that the hundreds of sub-carriers involved acquire and maintain a charter-party permit.

Staff advises that the fees for vessel common carriers, for-hire vessel operators, commercial air operators, and pipeline corporations should remain the same as the 2007-08 fee levels. A nominal increase in the fees paid by railroad corporations is necessary to cover the costs of operating the Commission's rail safety inspection program.

Staff informs us of a development in the charter bus industry that will impact payments to the PUCTRA fund (both revenue-based fees and application filing fees). It concerns the preemption provisions of Public Law 109-59 (the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users, or "SAFETEA-LU"). This multi-faceted 2005 federal legislation has presented

many implementation difficulties to the states. Technical amendments to the law (some of them sought by the states) became effective June 6, 2008.¹ No further amendments of any significance are anticipated. Staff therefore believes it is appropriate to move ahead with implementation of the law.

Essentially, the relevant preemption provisions of SAFETEA-LU limit the fees that a state may collect from a carrier which provides intrastate “charter bus transportation” when the carrier also holds federal operating authority to conduct interstate operations.² Under SAFETEA-LU, these carriers can be required to obtain intrastate operating authority, for which the state may collect an initial application fee. The state cannot, however, require the carrier to pay a fee or charge for the renewal of the authority, or the insurance filings, or other intrastate filing requirement necessary to operate within the state. Staff regards this to include any revenue fees such as those authorized by Section 421 et seq. if the carrier’s operating authority can be revoked or suspended for non-payment of the fees.

To implement the latest preemption we first need to determine what is meant by “charter bus.” The term is not defined in federal law. The legislative history of the earlier preemption (TEA-21) discloses that Congress did not intend for the charter bus preemption to apply to either taxis or limousines.³ While there are California laws that define a bus as a vehicle that seats more than 10 persons, this definition would include vehicles (such as many stretched limousines) whose operation Congress apparently did not intend to preempt.

¹ Enacted by H.R. 1195, the “SAFETEA-LU Technical Corrections Act of 2008.”

² A less far-reaching federal preemption of charter bus transportation was enacted in 1998 by Public Law 105-178 – the Transportation Equity Act for the 21st Century (TEA-21). That legislation limited state regulation of charter bus transportation to matters involving safety and insurance. It had little impact on the Commission’s regulation of charter-party carriers because virtually all of the Commission’s regulatory program for these carriers is related to safety and insurance.

³ Congressional Record – House, #3922, Section 4016, May 22, 1998.

A 2000 federal court case⁴ is very helpful in this regard. The matter before the United States District Court for the District of Colorado concerned a Colorado carrier's claim that its transportation of persons in seven-passenger vehicles was covered by the preemption language of 49 U.S. Code, Section 14501(a), as amended by TEA-21, and therefore not subject to state regulation. The State of Colorado argued the preemption should apply only to vehicles which it defines as a charter bus, i.e., a vehicle with a minimum seating capacity of 32 passengers. The Court agreed with Colorado. It found that neither the wording, legislative history of Section 14501, nor any other statute or federal regulation provides a clear definition of what passenger vehicle constitutes a bus or charter bus so as to aid in a determination of Congressional intent for the extent of preemption. The Court noted that typically, when Congress fails to define a specific term, a Court may presume that the drafters intended its ordinary meaning to attach.

Staff also advises there is a difference between federal law and California law in what is considered "charter transportation." Federal regulations⁵ define it as follows:

"Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin."

The type of service described is also regarded as charter transportation under California law. There are, however, additional kinds of transportation services which require a charter-party carrier certificate or permit under California law. Because they do not fall within the federal definition of charter transportation, they are not federally preempted. Examples are:

- Round-trip sightseeing services for which passengers pay individual fares.

⁴ 88 F. Supp. 2d 1147; 2000 U.S. Dist. LEXIS 3212; 2000 Colo.J.C.A.R.6567.

⁵ 49 CFR § 390.5(2)(iii).

- Transportation services conducted incidental to another business.
- Operations as a sub-carrier for a passenger stage corporation.
- Transportation of pupils to and from a private school.

To implement the preemption provisions of SAFETEA-LU, as amended, Staff recommends that for purposes of collecting PUCTRA fees and certificate/permit renewal application fees, we adopt as a definition of charter bus “a vehicle with a minimum seating capacity of 32 passengers.”

DISCUSSION

We agree that now the additional investigators authorized in the 2007-08 budget have been hired and assigned, the PUCTRA fee should be increased to pay for those positions. Therefore, we will raise the fee effective January 1, 2009, to 1/3 of 1%. The higher fee will apply only to vehicles that seat not more than 15 passengers, including the driver. The fee will remain at the 2007-08 level of ¼ of 1% of revenue for all other passenger carrier services.

We also will adopt Staff’s recommendation regarding the definition of charter bus in connection with the collection of PUCTRA fees and triennial charter-party certificate and permit renewal application fees. Notwithstanding any technical definitions of a bus that may exist for safety or other operational purposes, we will follow the rational, common sense approach of the federal District Court in Colorado and use a 32-passenger minimum seating capacity as the threshold for purposes of fee collections. Consistent with the Court’s approach, we do not believe vehicles such as a 15-passenger van or a 22-seat stretched SUV are within the ordinary meaning of a bus. The State of Colorado definition is reasonable and has been reviewed by the Court in connection with the federal preemption of charter bus transportation.

Fees for vessel common carriers, for-hire vessels operators, commercial air operators, and pipeline corporations will remain at their 2007-08 levels. There will be a nominal fee increase for railroad corporations to fund the Commission’s railroad safety inspection program.

A Fund Condition report is attached as Appendix A. It shows an estimated reserve of \$2,262,000 in the PUCTRA fund as of June 30, 2009. At this point we do not know the degree to which reduced fee collections resulting from the federal preemption will impact the PUCTRA fund. It is possible that fee

increases will be necessary in the future. In this regard, we note that starting with the 2000-01 fiscal year the Commission reduced the PUCTRA fee from $\frac{1}{2}$ of 1% to $\frac{1}{4}$ of 1% to reduce a surplus that had accumulated in the PUCTRA fund.⁶ Therefore, for the past eight years, the passenger carrier program has been paid for in part from reserve funds to eliminate the surplus. It therefore would not be unreasonable to return to a higher fee level in the future if necessary to adequately fund the program.

COMMENTS ON DRAFT RESOLUTION

To comply with Pub. Util. Code Section 311(g), the Consumer Protection and Safety Division (CPSD) commenced publication of a Daily Calendar notice on November 18, 2008, that apprised the public of the availability of its draft of this resolution and solicited comments by December 8, 2008. The draft resolution was mailed to the California Bus Association and the Greater California Livery Association. No comments were received.

FINDINGS

1. Public Utilities Code Section 421(b) requires the Commission annually to establish a fee to be paid by the passenger stage corporations, charter-party carriers of passengers, vessel common carriers, for-hire vessel operators, commercial air operators, railroad corporations, and pipeline corporations to fund the Commission's regulatory activities related to those entities.
2. The fees collected from carriers are deposited in the Public Utilities Commission Reimbursement Account pursuant to Public Utilities Code Section 408.
3. The 2007-08 state budget included five additional investigator positions for the passenger carrier enforcement program. Those positions have been filled.

⁶ The fee for passenger vehicle operators was at $\frac{1}{2}$ of 1% level for eight years, prior to which it had been at various higher percentages.

4. The primary duty of the additional investigators is to address the enforcement problems caused by small for-hire vehicles operating at airports.
5. Passenger stage corporations and charter-party carriers that operate vehicles seating up to 15 passengers, including the driver, should be required to pay a higher fee to fund the additional investigator positions.
6. The passenger carrier fee should remain unchanged at the 2007-08 level for the period July 1 through December 1, 2008.
7. Effective January 1, 2009, the passenger carrier fee should be set at 1/3 of 1% on revenue earned from the operation of vehicles seating 15 passengers or less, including the driver, and 1/4 of 1% of revenue earned from the operation of vehicles seating more than 15 passengers.
8. Public Law 109-59, as amended, restricts the states from collecting regulatory fees and operating authority renewal fees from a carrier that conducts intrastate charter bus transportation if the carrier holds federal operating authority.
9. To comply with Public Law 109-59, the Commission should not collect triennial charter-party certificate or permit application renewal fees, or quarterly or annual PUCTRA fees, for intrastate charter bus transportation that is conducted in a vehicle that seats 32 or more passengers when the vehicle is operated by a carrier that holds operating authority from the Federal Motor Carrier Safety Administration.
10. Any intrastate passenger transportation which does not fall within the federal definition of charter transportation, or is provided in a vehicle that seats fewer than 32 passengers, or is conducted by a carrier that does not hold federal operating authority, should be subject to payment of charter-party application renewal fees and PUCTRA fees.
11. A nominal increase in the fees paid by railroad corporations is required to fund the railroad safety inspection program.
12. Fees for vessel common carriers, for-hire vessels, and commercial air operators, and pipeline corporations should remain at their 2007-08 levels.

THEREFORE, IT IS ORDERED that:

1. Fees provided for in Section 421 et seq. of the Public Utilities Code are hereby set at the following levels for fiscal year 2008-09:

CLASS	FEE
Passenger stage corporations and charter-party carriers	Except as noted below, $\frac{1}{4}$ of 1% of gross revenue plus \$10 quarterly fee or \$25 annual fee.
	Effective January 1, 2009, the fee on gross revenue derived from transportation provided in a vehicle that seats not more than 15 passengers shall be $\frac{1}{3}$ of 1%.
Vessel common carriers	$\frac{1}{2}$ of 1% of gross revenue plus \$10 quarterly fee or \$25 annual fee
For-hire vessel operators	\$25 annual fee
Commercial air operators	\$25 annual fee
Railroad Corporations: Class I: Burlington Northern Santa Fe Union Pacific Class II and III (shortline)	\$1,495,675 \$3,664,325 0.22% of gross revenue, minimum of \$500 each
Pipeline corporations	$\frac{3}{100}$ of 1% of gross revenue

2. The penalty provided in Section 405 of the Public Utilities Code for default of payment of the fee provided in Section 421 of the Public Utilities Code shall remain fixed at 25% of the amount of the fee.
3. For the sole purpose of providing a more economical, simple and efficient method of collecting and accounting for fees required to be charged and collected under the Public Utilities Commission Transportation Account, passenger vehicle operators and vessel operators that engage the services of sub-carriers are responsible for the payment of the fees on the gross earnings of the sub-carriers.
4. Intrastate charter bus transportation that is conducted in a vehicle which seats 32 or more passengers when the vehicle is operated by a carrier that holds operating authority from the Federal Motor Carrier Safety Administration is

not subject to charter-party certificate or permit renewal application fees or gross operating revenue fees.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on December 18, 2008. The following Commissioners voted favorably thereon:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

FUND CONDITION 0461 - PUBLIC UTILITIES COMMISSION TRANSPORTATION REIMBURSEMENT ACCOUNT

Actual Reserve, June 30, 2008	\$2,933,000
Estimated 2008-09 Revenues:	
Quarterly Fees	
Passenger Vehicle Operators	\$3,274,000
Vessel Common Carrier Operations	164,000
Pipeline Corporations	60,000
Railroad Corporations	5,375,000
Commercial Air Operators, For-Hire Vessels	10,000
Regulatory Licenses and Permits	1,620,000
Income from Surplus Money Investments	123,000
Total Revenues	\$10,626,000
Total Resources	\$13,559,000
Estimated 2008-09 Expenditures:	
Passenger Vehicle Operators	\$5,688,000
Vessel Common Carrier Operators	164,000
Pipeline Corporations	60,000
Railroad Corporations	5,375,000
Commercial Air Operators, For-Hire Vessels	10,000
Total Expenditures	\$11,297,000
Estimated Reserve, June 30, 2009	\$2,262,000