

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco**M e m o r a n d u m****Date:** January 10, 2006**To:** The Commission  
(Meeting of January 12, 2006)**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento**Subject:** **2006 Legislative Package****LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** Adopt package as proposed**SUMMARY:** This package includes eight (8) specific legislative proposals. These proposals:

- 1) Encompass six (6) transportation items into a Transportation Omnibus bill,
- 2) Allow Commission decisions that order fines and/or penalties to have the same status as Superior Court judgments, and
- 3) Modify the California Labor Code to remove “automated people movers” from the definition of “conveyances” to correct an inconsistency between state and federal law and clarify that the Commission is responsible for safety oversight over APMs.
- 4) Repeal Public Utilities Code Section 390 relative to short run avoided cost (SRAC) calculations for QF pricing.
- 5) Consolidate, eliminate or modify the numerous reports the Commission is required to file with the Legislature and others.
- 6) Modify the Public Utilities Code to increase the net metering cap from the current limit of 0.5% to 2.5%.
- 7) Modify Public Utilities Code Section 739.8 to replace “ratepayers” with language that will allow low income water users in multifamily dwellings to receive financial assistance.
- 8) Modify Government Code 56131 to allow the Commission to evaluate the cumulative effects and other effects of annexations on remaining investor owned utility customers.

## LEGISLATIVE PROPOSAL ONE - TRANSPORTATION OMNIBUS LEGISLATION

### ITEM 1: ELIMINATION OF EMPLOYEE/DRIVERS REPORTING REQUIREMENT

**Recommendation:** Delete PU Code Sections 1043, 5230, and 5374.6, which require passenger stage corporations, household goods carriers and charter-party carriers to file an annual report documenting the number of employees covered by workers' compensation insurance.

**Statement of Problem:** The workers' compensation report requirement is burdensome to staff and carriers, and imposes an unnecessary regulatory burden on carriers without any benefit to the carrier and insurance industries or to the Commission regulatory mandate. Carriers have their operating authorities suspended and revoked when they fail to return the report.

**Justification:** The reporting requirements contained in PU Code Sections 1043, 5230 and 5374.6 are burdensome and duplicative. Insurers already audit employers for accuracy in reporting and paying workers' compensation insurance premiums. Staff has made an inquiry to the State Compensation Insurance Fund, the largest workers' compensation insurer, to seek their view on this proposal, and is waiting for their management's response.

**Fiscal Impact:** The **0.2 PY** currently allocated to this function can be reallocated to the performance of other critical and necessary licensing/enforcement matters that currently are understaffed.

### ITEM 2: ELIMINATION OF EQUIPMENT REPORTING REQUIREMENT

**Recommendation:** Delete PU Code Sections 1042, 5229, and 5374.5, which require passenger stage corporations, household goods carriers and charter-party carriers to file an annual report of all vehicles used in transportation for compensation during the preceding year.

**Statement of Problem:** The annual vehicle report requirement is burdensome to staff and carriers, and imposes an unnecessary regulatory burden on carriers without any benefit to the carrier and insurance industries or to the Commission regulatory mandate. Carriers have their operating authorities suspended and revoked when they fail to return the report.

**Justification:** The reporting requirements contained in PU Code Sections 1042, 5229 and 5374.5 are burdensome and duplicative. Commission GO 157-D and 158-A also require all charter-party carriers and passenger stage corporations, respectively, to maintain an equipment list on file with the Commission, and to file additions and deletions within ten days of the date a vehicle is put into or pulled out of service. These provisions are enforceable by fine or criminal or civil prosecution. For household goods carriers, the Commission could amend its General Orders or the MAX 4 Tariff for household goods transportation to require these carriers to maintain an equipment list. However, staff does not believe that is necessary for household goods carriers because they do not change out their vehicles as regularly as passenger carriers. Staff made an inquiry to the CHP about this proposal, and is waiting for their management's response.

**Fiscal Impact:** None. This requirement is not currently being enforced due to understaffing.

### **ITEM 3: EXEMPT CLASS “C” AND REMOVE FROM “Z” CHARTER-PARTY CARRIER CATEGORY INCIDENTAL TRANSPORTATION CARRIERS FROM THE TCP ACT AND REGISTER THEM AS PRIVATE CARRIERS IF THEY OPERATE VEHICLES OF A SIZE THAT REQUIRES REGISTRATION UNDER THE LAW**

**Recommendation:** Amend PU Code Section 5383 to remove Class C certificated carriers, amend PU Code Section 5384(a) to remove reference to incidental transportation “Z” permitted carriers, amend PU Code Section 5353 to include Class C and “Z” type carriers who provide incidental transportation without charging for that transportation, delete PU Code Sections 5371.3, 5373.1(4) and 5391.2, and amend 5392 to delete reference to 5391.2.

**Justification:** Many businesses and organizations provide passenger transportation in the furtherance of their primary enterprise, but do not hold themselves out to serve the public as for-hire carriers and do not charge separately for that transportation. Examples include: 1) a retirement home that transports residents on day trips; 2) an off-site airport parking lot operator that transports its patrons to and from the airport terminals; 3) transportation incidental to commercial balloon operations, commercial river rafting, and skiing; 4) transportation of farm employees to and from work; and 5) realtors transporting clients to view homes for sale. Currently, the PU Code arbitrarily divides these “incidental” carriers into separate groups, requiring some to obtain charter-party “Z” permits, some to obtain charter-party “C” certificates, and some to register as private carriers. PU Code Section 5353 specifically exempts 14 of these “incidental” carriers from the Charter-party Carrier Act.

For regulatory parity, all “incidental” carriers should be treated as private carriers. The types of consumer protection issues that might arise in a pure for-hire transportation business are not present. Private carriers are required to register with the Commission, file PL&PD insurance, and meet CHP safety requirements.

**Fiscal Impact:** Slight decrease in regulatory fees. There are currently 174 “C” and “Z” charter-party carriers, and some entities that may currently be required to have charter-party authority and do not. If 200 charter-party carriers became private carriers, they would pay \$35 initially and \$30 annually thereafter, compared with \$500 every 3 years for charter-party carriers. The difference over the first 3 years would be \$405 per carrier (\$500 - \$95), or **\$81,000**. There would also be 0.2 PY reallocation from charter-party licensing duties to other areas of licensing currently understaffed.

### **ITEM 4: CRIMINAL BACKGROUND CHECKS**

**Recommendation:** Add a PU Code Section which requires individuals who acquire an ownership interest (10% or more) in an existing household goods carrier operation to obtain approval from the Commission, the process for which would include a criminal background check.

**Statement of Problem:** Individuals who are not qualified to operate household goods carrier businesses may circumvent existing screening processes by acquiring interest in an existing carrier.

**Justification:** PU Code Section 5135 requires each applicant for a household goods carrier permit to submit fingerprints for each owner, partner, officer and director for the purpose of undergoing a criminal background check. Numerous applicants have been denied permits or had their operating authorities revoked due to adverse criminal backgrounds. Staff recommends that Commission approval be required of any ownership acquisition of 10% or more in a corporation or limited liability company, thereby affording the Commission the opportunity to order criminal background checks for these applicants.

This proactive stance would close a loophole in our background check program and further our goal of preventing unfit persons from having access to homes, possessions, and families of household goods customers. Current PU Code provisions allow the staff to screen out burglars, child

molesters, and other persons who lacked the fitness to be household goods carriers. This proposal would extend those provisions to anyone trying to circumvent the application and screening process by obtaining an ownership interest in a moving company.

**Fiscal Impact:** The Commission will incur an increase in fingerprinting costs (\$56.00 per person) imposed by DOJ. CPSD also estimates that this task would require an additional **0.1 PY**, which is absorbable with current staffing.

## **ITEM 5: CONVERT FORMAL PSC/TCP APPLICATION PROCESS TO INFORMAL ADMINISTRATIVE PROCESS**

**Recommendation:** Amend PU Code Sections 1031, 1032, 1032.1, which would allow the Commission to delegate the issuance and transfer of passenger stage corporation authority at the staff level, and amend PU Code Section 5374 and delete PU Code Section 5375.1, which would allow the Commission to delegate the issuance and transfer of charter-party certificate authority at the staff level and replace them with an informal process similar to, or the same as, the current process for charter-party and household goods carrier permitted carriers.

**Statement of Problem:** The current formal application process for passenger stage and charter-party carriers is burdensome and does not serve any public benefit.

**Justification:** The current requirements for passenger stage and charter-party certificated applicants are confusing, anti-competitive, and unnecessarily burdensome on applicants, the staff, and the Commission. They cause unwarranted delays, and do not benefit the public.

**Fiscal Impact:** Currently, the Manager of the Transportation Enforcement Branch processes all passenger stage corporation applications due to understaffing. The approximately 35 passenger stage applications received annually would have to be processed by the License Section staff, requiring an additional **0.25 PY**.

## **ITEM 6: TCP TELEPHONE DISCONNECTION**

**Recommendation:** Add a code section to the Charter-Party Carrier Act authorizing the disconnection of telephone service of unlicensed charter-party carriers, similar to the authority currently in place for household goods carriers in PU Code Section 5322.

**Statement of Problem:** Staff regularly encounters unlicensed charter-party carriers advertising in yellow page directories or elsewhere. Absent authorizing legislation, staff cannot order the carrier's phone company to disconnect their service. Disconnection of telephone service has proven to be an effective enforcement tool.

**Justification:** Staff can obtain court orders to disconnect the phone service of charter-party carriers pursuant to Commission and State Supreme Court decisions if the carriers use the services of telecommunication companies that file tariffs with the Commission. However, more and more, carriers subscribe to wireless service or other providers, who are not required to file tariffs, or do not have a similar rule in their existing tariffs. Staff also finds that a municipal or superior court judge prefers specific statutory authority rather than a Commission required tariff rule. The legislature has already provided such statutory authority for household goods carriers in PU Code Section 5322.

**Fiscal Impact:** None

**LEGISLATIVE PROPOSAL TWO - COMMISSION DECISIONS**

**Recommendation:** Seek legislation that allows Commission enforcement (penalty or fines) decisions to have the same status as Superior Court judgments.

**Statement of Problem:** To collect penalties and fines ordered in Commission decisions, the Commission must become a plaintiff in Superior Court unless the defendant voluntarily pays the fine.

**Justification:** Any collection actions that the Commission pursues in Superior Court are both costly and time-consuming. The longer the delay in collecting fines, the more likely that carriers in financial distress will not be able to pay the penalty or fine. The authority will also allow the Commission to avoid lengthy and unnecessary litigation in Superior Court.

**Fiscal Impact:** Deposits to the General Fund would be positively impacted. See the following based on staff's compilation of unpaid fines:

Administrative Citations:	1998-2005 ytd	\$ 32,830
Olls (HHG Carriers):	1999-2005 ytd:	\$248,500 in fines \$ 29,511 in restitutions \$ 6,932 in investigation costs
Olls (Passenger Carriers):	2003-2005 ytd:	\$ 25,200 in fines \$ 8,633 in investigation costs

## LEGISLATIVE PROPOSAL THREE - RAIL TRANSIT

**Recommendation:** Modify California Labor Code § 7300 to remove “automated people movers” (APMs) from the definition of “conveyances” (e.g. elevators and escalators) under the Labor Code to be certified and inspected by the California Department of Occupational Safety & Health (DOSH).

**Statement of Problem:** The Commission, not the DOSH, is the state safety oversight agency (SSOA) under the Federal Transit Administration (FTA). The FTA definition of public transit guideway system includes “people movers”. PU Code § 99152 uses the FTA definition of “public transit guideway” and § 99152 is intended to cover all modes of transportation regulated by the FTA, i.e., APMs. Currently, California Labor Code places “automated people movers” under the jurisdiction of DOSH.

**Justification:** The Commission has exercised safety oversight over the SFO AirTrain since its inception, has reviewed and approved its System Safety Plan, and performs regular inspections on it. AirTrain has a working relationship with the Commission which it does not wish to terminate. AirTrain does not wish to establish a new oversight relationship from scratch with another state agency.

DOSH has not issued regulations for the construction, certification, or inspection of APMs and has no experience in safety oversight of any form of transportation other than amusement rides, elevators, or escalators. Both the existing APM—the AirTrain at SFO and the proposed system at the Oakland Airport/BART Connection—are concerned with duplicative safety oversight. Both DOSH and CPSD have tentatively agreed to have the Commission continued its exclusive safety oversight over APMs with DOSH’s safety oversight over the Monorail in Disneyland as an amusement ride. (Note: the FTA definition does include monorails funded by federal monies while state law gives safety oversight of amusement rides to DOSH.)

**Fiscal Impact:** None.

**LEGISLATIVE PROPOSAL FOUR – REPEAL PU CODE SECTION 390**

**Recommendation:** Repeal Public Utilities Code Section 390

**Statement of Problem:** Public Utilities Code Section 390 (“Section 390”) was adopted as part of AB 1890, California’s electric industry restructuring law of 1996. Among other things, it established the methodology for determining the short run avoided cost (“SRAC”) energy payments by utilities to qualifying facilities (“QFs”). Under Section 390, SRAC energy payments would be based on the clearing price paid by the Power Exchange (“PX”) once that entity was deemed to be functioning properly. Until that time, SRAC energy payments would be based on a “transitional” formula which was tied to California natural gas border price indices. However, in January 2001, the PX ceased to exist, and the “interim” formula, anticipated to be in place for 14 months, became the permanent methodology for calculating SRAC energy prices.

Southern California Edison Company and various QF parties have challenged Commission decisions on two separate occasions concerning the Section 390 transitional formula on the grounds that the formula violates PURPA. In both instances, the Court of Appeal, Second Appellate District, has upheld the Commission’s decisions. However, in *Southern California Edison Co. v. Public Utilities Comm.* (2002) 101 Cal. App. 4<sup>th</sup> 982, the Court referred to Section 390 as a “millstone around the Commission’s neck.”

**Justification:** The Commission is open to further legal challenges if Section 390 remains the guiding principle for QF pricing. Further, Section 390 is inconsistent with the Commission’s other methodologies for determining market prices and restricts the means by which a “proper” avoided cost may be developed in the Commission’s current proceeding on this issue, R.04-04-025.

**Fiscal Impact:** Unknown though could potentially reduce legal costs associated with defending future Commission actions relative to QF pricing that would likely be challenged by interested parties.

## LEGISLATIVE PROPOSAL FIVE – REPORT ELIMINATION/MODIFICATION

**Recommendation:** Consolidate, eliminate or modify the numerous reports the Commission is required to file with the Legislature and others.

**Statement of Problem:** Currently the Commission is required to file more than 47 reports with the Legislature, Governor and various state and federal agencies. Some of these reports are one time reports required by state budget action or specific legislation. Other reports are annual reports on information ranging from hazardous materials on rail lines to the annual report and work plan.

**Justification:** There appears to be a high percentage of staff time being spent on the preparation of reports. Through eliminating reports that no longer appear useful, consolidating information contained in smaller reports into larger reports, such as the annual report or the work plan, or modifying the reporting dates to better manage information/data, it is hoped that staff can better manage the other business of the Commission.

**Fiscal Impact:** Unknown, depending on number of reports eliminated, consolidated or modified. Potentially significant.

## LEGISLATIVE PROPOSAL SIX – INCREASE OF NET METERING CAP

**Recommendation:** Modify language in PU Code Section 2827 (c) (1) to increase the current net metering cap of 0.5% to 2.5%.

**Statement of Problem:** Current statute sets a cap on net metering at 0.5%. PG&E, as well as SDG&E, have raised issues about “bumping up” against the limit, especially in light of the soon to be released California Solar Initiative (CSI) and the likely increase in customers wanting to avail themselves of net metering tariffs in conjunction with solar usage.

**Justification:** To ensure the maximum benefits of the CSI it is necessary to raise the cap above the current 0.5% level.

**Fiscal Impact:** Unknown

<b>LEGISLATIVE PROPOSAL SEVEN – WATER LOW INCOME RATEPAYER ASSISTANCE</b>
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**Recommendation:** Modify language in PU Code Section 739.8 to remove the word “ratepayers” and insert language that better defines residential water use

**Statement of Problem:** Current statutory language limits application of the water low-income rate assistance program to “ratepayers” of the utility. That is, low-income individuals in multi-family housing that receive their water service from a regulated utility but do not receive the bill (the bill goes to the landlord) are not covered by the existing code.

**Justification:** Minor statutory modifications must be made to ensure objectives of the Water Action Plan can be realized relative to low income water user assistance. The Commission, through its already existing regulatory authority, will work to develop a program of passing on financial assistance to those low income water users not currently being served.

**Fiscal Impact:** Unknown

**LEGISLATIVE PROPOSAL EIGHT – CONSIDERATION OF CUMULATIVE EFFECT OF ADDITIONAL ANNEXATION PROPOSALS**

**Recommendation:** Modify Government Code Section 56131 to allow the Commission to consider (1) the cumulative effect that additional annexation proposals may have on the utilities' ability to provide adequate service at reasonable rates and (2) the effect that annexation proposals may have on the efficacy of the utilities' programs on energy efficiency, renewable portfolio standard, California Solar Initiative, resource adequacy and other public purpose related programs.

**Statement of Problem:** Pursuant to Government Code Section 56131, a Local Area Formation Commission (LAFCo) must request the opinion of the Commission regarding any proposal for a change of organization or a reorganization that gas or electric service be furnished by a district (e.g, SMUD) within any of the service territory of a CPUC jurisdictional utility (e.g., IOU). The Commission shall make a report to the LAFCo stating whether the proposed service by the district will substantially impair the ability of the utility to provide adequate service at reasonable rates within the remainder of the service area of the utility.

The statute narrowly limits the Commission's investigation to considering the effects of only a single annexation proposal on the ability of the utility to provide adequate service at reasonable rates within the remainder of the service area of the utility. It prevents the Commission from considering either the cumulative effects of additional such proposals or the effect such proposals may have on the efficacy of the utilities' programs on energy efficiency, renewable portfolio standard, California Solar Initiative, resource adequacy and other public purpose related programs.

**Justification:** The inability to consider these additional effects may pose a substantial impairment to the utilities' ability to (1) provide adequate service at reasonable rates and (2) implement the State's energy policy goals and priorities.

**Fiscal Impact:** Unknown