

Date of Issuance

December 16, 2022

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ADMINISTRATIVE SERVICES DIVISION

RESOLUTION M-4865

December 15, 2022

R E S O L U T I O N

Resolution M-4865. Adopts Public Utilities Commission Transportation Reimbursement Account User Fees, effective January 1, 2023.

SUMMARY

This resolution adopts Public Utilities Commission Transportation Reimbursement Account (PUCTRA), Fund 0461, user fees as follows:

<u>CLASS</u>	<u>FEE</u>
Passenger Vehicle Operators:	
Charter-Party Carriers, including Transportation Network Companies and Passenger Stage Corporations	0.003 (0.3 percent) of gross intrastate revenue plus minimum \$10 quarterly fee or \$25 annual fee
Vessel Operators:	
Common Carrier Vessel Operator	0.0055 (0.55 percent) of gross intrastate revenue plus minimum \$10 quarterly fee or \$25 annual fee
Railroad Corporations:	
Class I:	
Burlington Northern Santa Fe	\$3,843,422.20
Union Pacific	\$9,412,257.80
Class II and III (shortline)	\$552,320 or 0.004 (0.4 percent) of gross intrastate revenue, minimum of \$500 each
Pipeline Corporations	0.00068 (0.068 percent) of gross intrastate revenue

BACKGROUND

The California Public Utilities Commission (CPUC or Commission) is authorized by the California Public Utilities Code to annually assess user fees for transportation carriers, railroad corporations, and pipeline corporations. Public Utilities Code Section 421 states, in part:

- (a) 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.
- (b) The annual fee shall be established to produce a total amount equal to the amount established in the authorized commission budget for the same year, including adjustments appropriated by the Legislature and an appropriate reserve, to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds pursuant to Section 403, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year.
- (c) Notwithstanding any other provision of law, the fees paid by railroad corporations shall be used for state-funded railroad investigation and enforcement activities of the commission, other than the rail safety activities funded by the Transportation Planning and Development Account pursuant to Section 99315. The railroad fees shall be set annually at a level that generates not less than the amount sufficient to fund activities pursuant to Sections 765.5, 916.2, and 7712.

The Commission annually analyzes the amount of PUCTRA fees sufficient to support the Commission's regulatory activities for the carrier class from which the fee is collected and to establish an appropriate reserve.¹ The Commission's PUCTRA appropriation for its regulatory activities is subject to approval by the California Department of Finance.²

¹ Cal. Pub. Util. Code § 422(a)(2).

² Cal. Pub. Util. Code § 422(a).

When determining the amount of the PUCTRA fee needed, the Commission may choose between several calculation methodologies established in California Public Utilities Code Sections 422 and 422.1. The Commission may establish different methods for calculating fees for each class of carrier.³ For example, the Commission may use a percentage of gross intrastate revenues of the class for carriers other than railroads.⁴ The percentage-based PUCTRA fee is charged on gross intrastate revenue, defined as “all compensation for the transportation or storage of property or the transportation of persons when both the origin and destination of the transportation or the performance of the service is within this state, and shall not include compensation for the transportation of persons or property in interstate or foreign commerce or the transportation of vehicles by ferries.”⁵

In the alternative, the Commission may assess fees on a basis other than revenue, including, but not limited to, on a per vehicle basis for passenger carriers.⁶ For railroad corporations, the fees shall be allocated within each class in accordance with Section 422 subdivision (g).⁷ In addition to methodologies available under Section 422, the Commission may also establish a uniform annual fee to be paid by every charter-party carrier of passengers.⁸

DISCUSSION

Revenue and Expenditure Analysis

The Governor’s Budget structures PUCTRA’s authorized expenditures by Program and Subprogram, as shown below in Table 1. Subtasks, the most granular level of detail by utility class (passenger vehicle operators, common carrier vessel operators, pipeline corporations), are not displayed in the Governor’s Budget but tracked internally by the CPUC.

³ Cal. Pub. Util. Code § 422(b).

⁴ Cal. Pub. Util. Code § 422(c)(1).

⁵ Cal. Pub. Util. Code § 424(b).

⁶ Cal. Pub. Util. Code § 422(c)(2).

⁷ Cal. Pub. Util. Code § 422(c)(1).

⁸ Cal. Pub. Util. Code § 422.1.

Table 1: Governor's Budget Structure, PUCTRA

Program	Subprogram	Subtask (Utility Class) Tracked Internally
Regulation of Utilities (6690)	Transportation Licensing and Enforcement (6690046)	Passenger Vehicle Operators Common Carrier Vessel Operators Pipeline Corporations
	Freight Safety (6690055)	Railroad Corporations

In addition to the CPUC's budgeted expenditures from PUCTRA to support the Commission's regulatory activities, the fund supports statewide fund assessments.

Table 2 shows PUCTRA's 2022-23 current level of expenditures and 2022-23 Fund Assessments, distributed by Utility Class per Table 1.

Table 2. Expenditures of PUCTRA

Utility Class	Current Level 2022-23 ² (a)	2022-23 Fund Assessments ¹⁰ (b)	Total Estimated Expenditures 2022-23 (a+b)
Passenger Vehicle Operators	\$16,452,000	\$810,000	\$17,262,000
Vessel Operators	\$349,000	\$ 17,000	\$366,000
Pipeline Corporations	\$157,000	\$8,000	\$165,000
Railroad Corporations	\$13,160,000	\$648,000	\$13,808,000
Total	\$30,118,000	\$1,483,000	\$31,601,000

Table 3 shows comparison between 2022-23 estimated user fee revenue at current rates and 2022-23 total estimated expenditures, distributed by Utility Class per Table 1. Assuming no changes are made, the estimated user fee revenue at current rates are not sufficient to sustain the estimated expenditures.

² From the 2022-23 Governor's Budget; allocated by workload data by utility class.

¹⁰ From the 2022-23 Governor's Budget 0461 – Fund Condition Statement; allocated by workload data by utility class.

Table 3. PUCTRA User Fees and Expenditures Projected for 2022-23 (No Fee Change)

Utility Class	Estimated User Fee Revenue 2022-23 (a) ¹¹	Total Estimated Expenditures 2022-23 (b)	Estimated Revenues Less Estimated Expenditures (a-b)
Passenger Vehicle Operators	\$0	\$ 17,262,000	\$(17,262,000)
Vessel Operators	\$237,000	\$366,000	\$(129,000)
Pipeline	\$212,000	\$165,000	\$47,000
Freight Rail	\$13,276,000	\$13,808,000	\$(532,000)
Total	\$13,725,000	\$31,601,000	\$(17,876,000)

Fund Reserve Analysis

CPUC's fund reserve policy for PUCTRA requires a minimum fund reserve of 25 percent of total estimated expenditures. At the expected level of expenditures and current rates, Fiscal Year 2022-23 estimated fund reserve is not sufficient to meet the minimum requirement.

CPUC proposes the necessary fee increases and reinstatements of fees to support the expected level of expenditures and maintain the required level of fund reserves.

Passenger Vehicle Operators

Based on the analysis of projected PUCTRA revenues to program expenditures and the PUCTRA fund reserve attributable to Passenger Vehicle Operators, the Commission concludes that the current fund reserve is no longer sufficient to support the Commission's regulatory activities for this class pursuant to Public Utilities Code Section 421(b). The fee for Passenger Vehicle Operators is reinstated at 0.003 (0.3 percent) of gross intrastate revenue plus a minimum \$10 quarterly fee or \$25 annual fee.

Carriers are required to report quarterly or annual gross intrastate revenues pursuant to Public Utilities Code Section 423. The fee will be evaluated annually and modified as needed.

Vessel Operators

¹¹ Amounts in Column (a) represent the estimated user fee revenues using user fee rates from the PUCTRA resolution M-4858.

The estimated revenues for vessel operators at current rates are not sufficient to match the current estimated expenditures. To sustain the estimated expenditures for Vessel Operators, the Commission concludes the fee for Vessel Operators shall be 0.0055 (0.55 percent) of gross intrastate revenue plus a minimum \$10 quarterly fee or \$25 annual fee.

Freight Rail

Unlike the other utility classes of PUCTRA, freight rail user fees are set by amount for Class I railroad corporations and by rate with a minimum fee for Class II and III railroad corporations. The total fee level of \$13,808,000 is set for the railroad corporations to match the estimated expenditures in Table 3.

Pipeline Corporations

The estimated revenues for Pipeline Corporations at current rates are sufficient to match the current estimated expenditures. To sustain the estimated expenditures for Pipeline Corporations, the Commission concludes the fee for Pipeline Corporations shall remain at 0.00068 (0.068 percent) of gross intrastate revenue.

Prime Carriers Payment of PUCTRA fees for Subcarriers

“Prime carriers” are responsible for the reporting and payment of the fees on the gross intrastate earnings of subcarriers. Prime carriers are those passenger vehicle and vessel operators who engage the services of subcarriers. Such services of subcarriers by these prime carriers shall be evidenced by a written document. Fee statements submitted by a prime carrier shall indicate the name and gross intrastate earnings of each subcarrier in sufficient detail to enable the Commission to cross-reference earnings and determine appropriate fee amounts among the respective carriers. Similarly, a fee statement submitted by a subcarrier shall indicate its gross intrastate earnings associated with each prime carrier. The Commission establishes this payment method for purpose of providing a more economical, simple, and efficient method of collecting and accounting for fees required to be charged and deposited in PUCTRA.

Penalties for Late Payment

The penalty imposed in Public Utilities Code Section 405 for default of the payment of the fee provided for in Public Utilities Code Section 421 shall remain fixed at 25 percent of the amount of the fee. Late penalties collected from common carriers and other

business subject to Public Utilities Code Section 421 are deposited in the PUCTRA fund.¹²

Calculating Revenue Subject to the PUCTRA Fee

The PUCTRA fee applies to a carrier's gross intrastate revenues¹³ for "all compensation for the transportation or storage of property or the transportation of persons when both the origin and destination of the transportation or the performance of the service is within this state...."¹⁴ The PUCTRA fee does not apply to "compensation for the transportation of persons or property in interstate or foreign commerce or the transportation of vehicles by ferries."

Per Public Utilities Code § 208, "'Transportation of persons' includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage."¹⁵ For tariffed common carriers, per Public Utilities Code § 494, "compensation for transportation" includes not only "fares" approved in their tariffs, but also other "rates" and "charges."¹⁶

The Public Utilities Code specifies that the fee applies to "gross" revenue and "all" compensation for transportation. Revenue is not limited to net revenues or "fares," and the Public Utilities Code defines "transportation of persons" broadly to include the collection and payment charges incidental to the delivery of transported persons. As such, fees such as bridge tolls, wharfage fees, and similar charges collected from passengers is considered gross revenue derived from compensation for transportation and subject to the PUCTRA fee. This also includes Access for All fees, authorized by Chapter 701, Statutes of 2018 (Senate Bill 1376) to support transportation access for wheelchair users.

The purpose of this clarification on revenue subject to the PUCTRA fee is to provide guidance to regulated entities and to ensure revenues are calculated in a consistent way. The Commission does not intend to increase total dollar amounts collected by clarifying that "gross intrastate revenues" include certain charges, because this resolution calculates

¹² Cal. Pub. Util. Code § 408.

¹³ Cal. Pub. Util. Code § 422.

¹⁴ Cal. Pub. Util. Code § 424(b).

¹⁵ Cal. Pub. Util. Code § 208.

¹⁶ Cal. Pub. Util. Code § 494(a).

the percentages of PUCTRA fee to produce the authorized Commission budget, plus an appropriate reserve.¹⁷

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was mailed or emailed to all affected regulated entities on November 10, 2022, in accordance with Public Utilities Code § 311(g)(1). Twelve comments were received but only five pertained to the resolution. The entities from which comments were received are Park N Fly, LLC (Park N Fly), Napa Valley Tours, LLC (Napa Valley Tours), Greater California Livery Association (GCLA), Catalina Channel Express (CCE), and Discover Tehachapi.

The comments received from Park N Fly, CCE, and Discover Tehachapi concerned what should be included in gross intrastate revenue on which the PUCTRA fee should be applied. Park N Fly and Discover Tehachapi requested clarification about how a business would measure the amount of gross revenue subject to the PUCTRA fee when transportation services are only incidental to the other components of their business. Cal. Pub. Util. Code § 424(b) states in part: “Gross intrastate revenue” includes all compensation for ... the transportation of persons...” Cal. Pub. Util. Code § 208 states: “‘Transportation of persons’ includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage.” However, operating models exist wherein carriers conduct transportation services that are only incidental to another business. Where transportation services are incidental to another business, and the business does not receive revenue separately from its transportation of persons, the business revenue is not counted as “gross intrastate revenue” subject to the PUCTRA fee. Carriers may contact Commission staff with further questions about calculating PUCTRA fees.

CCE submitted comments disputing the inclusion of wharfage fees in the calculation of total gross revenue subject to the PUCTRA fee. CCE argues that taxes and fees imposed by and then remitted to local governments are not transportation revenue. Further, in light of recent legal precedent established by *Monterey Peninsula Water Management District v. Public Utilities Commission* (2016), 62 Cal. 4th 693, local taxes and fees are outside the Commission’s jurisdiction, such fees should be excluded from the calculation of gross transportation revenue subject to the PUCTRA fee.

The Commission responds that the PUCTRA fee applies to gross revenues as defined in Cal. Pub. Util. Code § 424(b) for transportation of persons and property as defined in Cal.

¹⁷ Cal. Pub. Util. Code § 421(b).

Pub. Util. Code §§ 208 and 209. Because the PUCTRA fee applies to “gross” revenue and “all” compensation for transportation, “transportation of persons” includes the collection and payment charges incidental to the delivery of transported persons. Thus, fees such as bridge tolls and wharfage fees, are treated as gross revenue derived from compensation for transportation. Thus, for many reasons, including that the facts of *Monterey Peninsula Water District* are distinguishable from those here, the Commission rejects CCE’s claim that taxes and fees imposed by local governments may not be included in the calculation of gross revenue.

Other party comments included an inquiry from Napa Valley Tours requesting that the Commission only collect a \$25 annual fee and not collect quarterly revenue-based fees. As previously stated, Cal. Pub. Util. Code § 421(b) requires the Commission to set the annual fee “to produce a total amount equal to the amount established in the authorized commission budget for the same year, including adjustments appropriated by the Legislature and an appropriate reserve, to regulate common carriers and related businesses.” Pursuant to the previous discussion, the fees were set at a level that would fund operations and maintain an appropriate reserve. Collecting only the annual fee would not accomplish this.

Finally, GCLA requests that reinstating the passenger vehicle operator fees be held for another year because its operators who were financially impacted by the pandemic are still financially struggling. Commission Resolution M-4858, adopted on March 17, 2022, states, “CPUC notes the fund reserves for PUCTRA are depleting. CPUC will assess the necessary fee increases and reinstatements of fees in future resolutions to support the expected level of expenditures and maintain the required level of fund reserves.” It is necessary at this time to reinstate the fees to fund Commission operations and to maintain an adequate reserve.

THEREFORE, IT IS ORDERED THAT:

1. The current Public Utilities Commission Transportation Reimbursement Account user fees provided for in Public Utilities Code Section 421 shall be revised as follows:

<u>CLASS</u>	<u>FEE</u>
Passenger Vehicle Operators:	
Charter-Party Carriers, including Transportation Network Companies and Passenger Stage Corporations	0.003 (0.3 percent) of gross intrastate revenue plus minimum \$10 quarterly fee or \$25 annual fee
Vessel Operators:	
Common Carrier Vessel Operator	0.0055 (0.55 percent) of gross intrastate revenue plus minimum \$10 quarterly fee or \$25 annual fee
Railroad Corporations:	
Class I:	
Burlington Northern Santa Fe	\$3,843,422.20
Union Pacific	\$9,412,257.80
Class II and III (shortline)	\$552,320 or 0.004 (0.4 percent) of gross intrastate revenue, minimum of \$500 each
Pipeline Corporations	0.00068 (0.068 percent) of gross intrastate revenue

2. Carriers retain the obligation to report quarterly or annual gross intrastate revenues, pursuant to Public Utilities Code Section 423.
3. Prime carriers retain the obligation to report and pay the fees on the gross intrastate earnings of subcarriers.
4. The penalty imposed in Public Utilities Code Section 405 for late payment of the fee provided for in Public Utilities Code Section 421 shall remain fixed at 25 percent of the amount of the fee.
5. Today's adopted fee structure will be evaluated annually and modified as needed based on fund condition status.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 15, 2022.

The following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON

Rachel Peterson
Executive Director

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE HOUCK
JOHN R.D. REYNOLDS
Commissioners

APPENDIX A**0461 Public Utilities Commission Transportation Reimbursement Account
Fund Condition Statement - Projected**

	FY 2021-22	FY 2022-23
BEGINNING BALANCE	\$34,661,000	\$23,366,000
Prior Year Adjustments	\$384,000	-
Adjusted Beginning Balance	\$35,045,000	\$23,367,000
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS		
Revenues:		
4126600 - Public Utilities Commission - Quarterly Fees	\$13,337,000	\$21,769,000
4126800 - Public Utilities Commission – Penalties on Quarterly Fees	\$0	\$0
4129400 - Other Regulatory Licenses and Permits	\$1,894,000	\$650,000
4127400 - Renewal Fees	\$0	\$0
4163000 - Investment Income - Surplus Money Investments	\$87,000	\$140,000
4171400 Escheat – Unclaimed Checks, Warrants, Bonds and Coupons	\$0	\$0
Operating Transfers from Coronavirus Relief Fund 8505 per EO E 20/21-251 CS 11.90	\$666,000	
Operating Transfers from Fund 0461 to Fund 0001 General Fund per EO E 21/22-276	-\$861,000	
Total Revenues, Transfers, and Other Adjustments	\$15,123,000	\$21,427,000
Total Resources	\$30,246,000	\$42,854,000
EXPENDITURES AND EXPENDITURE ADJUSTMENTS		
Expenditures:		
Public Utilities Commission State Operations	\$25,484,000	\$30,118,000
Supplemental Pension Payments	\$390,000	\$390,000
Statewide General Admin Expense (Pro Rata)	\$928,000	\$1,093,000
Total Expenditures and Expenditure Adjustments	\$26,802,000	\$31,601,000
FUND BALANCE	\$23,366,000	\$13,192,000

1. Projected Fund Condition Statement is based on estimated used fees revenue based on increased rates.

2. The projected Fund Condition Statement may not match to the 2023-24 Governor's Budget as the updated revenue projections are not reflected in the 2023-24 Governor's Budget.