



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA ENERGY COMMISSION**

Compliance Review Unit  
State Personnel Board  
May 10, 2016

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## INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Energy Commission (CEC) personnel practices in the areas of examinations, appointments, EEO, PSC's, and mandated training from November 1, 2014, through August 1, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Complete Job Analyses Were Not Developed or Used for the Examination Process	Very Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations	In Compliance

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

### **BACKGROUND**

The CEC is the state's primary energy policy and planning agency. Established by the Legislature in 1974, the California Energy Commission has approximately 600 staff is responsible for ensuring a reliable supply of energy to meet state needs while protecting public health, safety, and the environment. Activities include: permitting energy facilities; designating transmission line corridors; assessing current and future energy demands and resources; developing energy efficiency standards; implementing programs to reduce wasteful and inefficient use of energy; stimulating development of alternative sources of energy such as wind, solar, biomass, and non-petroleum transportation fuels; analyzing transportation fuel supplies, prices, and trends; and maintaining capacity to respond to energy emergencies.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CEC examinations, appointments, EEO program, PSC's, and mandated training from December 1, 2014, and August 31, 2015. The primary objective of the review was to determine if CEC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of CEC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CEC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CEC EEO program included examining written CEC policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CEC's PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether CEC justifications for the contracts were legally sufficient. The review was limited to whether CEC practices, policies, and procedures relative to PSC's complied with procedural requirements.

On April 20, 2016, an exit conference was held with the CEC to explain and discuss the CRU's initial findings and recommendations. On April 29, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) the advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the SCO or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor

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<sup>1</sup> If an employee organization requests the SPB to review any SPB personal services contract during the compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CEC conducted 51 examinations. The CRU reviewed 17 of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Chief Counsel	Open	Performance <sup>2</sup>	12/29/2014	9
Associate Energy Specialist (Technology Evaluation and Development)	Open	Training and Experience <sup>3</sup>	Continuous	7
Career Executive Assignment (CEA) A, Assistant Executive Director, Compliance Assistance & Enforcement	CEA	Statement Of Qualifications (SOQ) <sup>4</sup>	Continuous	26
CEA A, Special Advisor to a Commissioner	CEA	SOQ	4/14/2015	14
CEA C, Chief Counsel	CEA	SOQ	1/22/2015	2
Electric Transmission System Program Specialist I	Departmental Promotional	Qualification Appraisal Panel (QAP) <sup>5</sup>	12/10/2014	8
Electric Transmission System Program Specialist II	Departmental Promotional	QAP	12/10/2014	6

<sup>2</sup> A performance examination is a category of motor work sample tests where there is some physical activity or the physical implementation of things.

<sup>3</sup> The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

<sup>4</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

<sup>5</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Electric Transmission System Program Specialist III	Departmental Promotional	QAP	12/10/2014	5
Electrical Engineer	Open	Performance	4/21/2015	26
Energy Analyst	Open	Written	Continuous	69
Energy Commission Specialist II (Technology Evaluation & Development)	Open	Supplemental Application (SA) <sup>6</sup>	Continuous	2
Energy Commission Specialist III (Technology Evaluation & Development)	Open	SA	Continuous	0
Energy Commission Supervisor II (Efficiency)	Open	QAP	Continuous	6
Energy Resources Specialist III (Managerial)	Open	QAP	Continuous	14
Energy Specialist I (Technology Evaluation and Development)	Open	T&E	Continuous	7
Planner I, Energy Facility Siting	Open	SA	Continuous	4
Research Specialist IV (Various Studies)	Departmental Promotional	Education & Experience <sup>7</sup>	2/20/2015	11

**FINDING NO. 1 – Complete Job Analyses Were Not Developed or Used for the Examination Process**

**Summary:** A job analysis is required for each civil service examination. The CEC did not provide a complete job analysis for the Assistant Chief

<sup>6</sup> In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

<sup>7</sup> In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

Counsel, Electrical Engineer, Electric Transmission System Program Specialist I, Electric Transmission System Program Specialist II, Electric Transmission System Program Specialist III, Energy Resources Specialist III (Managerial), and Research Specialist IV (Various Studies) civil service examinations. The CEC provided mini job analyses for the examinations listed above but they did not include all required components as listed in the Merit Selection Manual, including a description of how the knowledge skills and abilities (KSA's) and tasks were obtained, evidence of how and when the KSA's and tasks were reviewed, subject matter experts (SME's) and survey respondents' current classifications, evidence that a representative sample of SME's participated in the finalization meeting and survey process, and survey cutoff methodology.

Classification	List Active Date	List Expiration Date	No. of Eligibles
Assistant Chief Counsel	6/5/2015	6/5/2016	5
Electric Transmission System Program Specialist I	1/30/2015	1/30/2016	2
Electric Transmission System Program Specialist II	1/30/2015	1/30/2016	3
Electric Transmission System Program Specialist III	1/30/2015	1/30/2016	3
Electrical Engineer	6/12/2015	6/12/2016	7
Energy Resources Specialist III (Managerial)	8/25/2015	8/25/2016	9
Research Specialist IV (Various Studies)	3/2/2015	3/2/2016	5

**Criteria:** The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for the examination process. A "[j]ob analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analysis adhere to the legal and professional standards outlined in the job analysis section of the MSM, and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure

is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite KSAs, and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

**Severity:** Very Serious. The examinations may not have been job-related or legally defensible.

**Cause:** The CEC states that the cause of this finding is due to lack of examination resources.

**Action:** To correct this deficiency, the CEC must abolish the Assistant Chief Counsel, Electrical Engineer, and Energy Resources Specialist III (Managerial) examination lists, which have not yet expired. Within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CEC must submit to the CRU a written report of compliance verifying that the above-stated examination lists have been abolished. Prior to the CEC administering any future examinations, the CEC must create and develop each examination based upon a job analysis that meets the requirements of the MSM.

Furthermore, the CRU finds the appointments that were made from the examinations that were administered without a job analysis were made in good faith, were not the fault of the appointed employees, and did not merit being voided.

### **Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related

qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CEC made 115 appointments. The CRU reviewed 22 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Assistant Chief Counsel	Certification List	Permanent	Full Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	1
Data Processing Manager IV	Certification List	Permanent	Full Time	1
Electric Generation System Specialist I	Certification List	Limited Term	Full Time	1
Energy Commission Supervisor II (Efficiency)	Certification List	Permanent	Full Time	2
Energy Commission Supervisor II (TED)	Certification List	Permanent	Full Time	2
Energy Commission Specialist (Efficiency)	Certification List	Permanent	Full Time	1
Energy Commission Specialist I (Technology Evaluation and Development)	Certification List	Permanent	Full Time	1
Mechanical Engineer	Certification List	Permanent	Full Time	1
Training Officer II	Certification List	Permanent	Full Time	1
Office Manager II, California Energy Commission	Mandatory Reinstatement	Permanent	Full Time	1
Associate Personnel Analyst	Reinstatement	Permanent	Full Time	1
Mechanical Engineer	Reinstatement	Limited Term	Full Time	1
Electric Transmission System Program Specialist III	Reorganization Reassignment	Permanent	Full Time	1
Staff Services Manager II (Specialist)	Retired Annuitant	Temporary	Intermittent	1
Supervising Electrical Engineer	Temporary	Temporary	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Energy Resource Specialist III (Managerial)	Temporary Authorization Utilization	Temporary	Intermittent	1
Energy Resource Specialist III (Managerial)	Training & Development	Permanent	Full Time	1
Associate Energy Specialist(Forecasting)	Transfer	Permanent	Full Time	1
Research Analyst I (GIS)	Transfer	Permanent	Full Time	1

**FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** The CEC did not separate two EEO questionnaires from 121 STD. 678 employment applications.

**Criteria:** Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

**Severity:** Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

**Cause:** The CEC states that the cause of this finding is due to inadvertent oversight related to the handling of multiple applications, and a lack of awareness by applicants that completion of the questionnaire is

only required when applying for state examinations and not when applying for vacant positions.

**Action:** The CEC has submitted a corrective action plan for ensuring compliance in meeting the requirements of Government Code Section 19704; therefore, no further action is required at this time.

**FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The CEC did not prepare, complete, and/or retain required probationary reports of performance for three of the 22 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Data Processing Manager IV	Certification List	1	2
Energy Commission Supervisor II (Efficiency)	Certification List	1	2
Training Officer II	Certification List	1	3
Total		3	7

**Criteria:** A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently

frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The CEC states that it recognizes the importance of the probationary period and the need to evaluate its employees to ensure the successful performance of the duties assigned. Although the CEC had a process in place for tracking the submission of Individual Development Plans, there was no tracking system in place for probationary reports.

**Action:** The CEC has submitted a corrective action plan for ensuring compliance in meeting the probationary requirements of Government Code section 19172; therefore, no further action is required at this time.

### **Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CEC's EEO program that was in effect during the compliance review period.

**FINDING NO. 4 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that CEC's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the CEC in regards to EEO issues. In addition, the CEC has an established DAC which reports to the Director on issues affecting persons with disabilities. The CEC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff.

**Personal Services Contracts**

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state.

PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CEC had 18 PSC's that were in effect and subject to General Services (DGS) approval and thus our procedural review. The CRU reviewed five of these, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
California Air Resources Board	ARB Zero Emission and Plug-in Hybrid Light Duty Vehicle Rebate Program	8/1/2014 – 8/31/2016	\$5,000,000	Yes
California Air Resources Board	Identification and Evaluation of Constituents Found in Biogas in California	3/26/2014 – 10/1/2018	\$400,000	Yes
The Regents of the UC Irvine Campus	Natural Gas Vehicle Incentive Project	1/31/2015 – 6/30/2018	\$11,192,233	Yes
The Regents of the UC Berkeley Campus	Visualizing Climate-Related Risks to the Natural Gas System Using Cal-Adapt	5/13/2015 – 12/29/2017	\$300,000	Yes
U.S. Geological Survey	High Resolution Measurement of Levee Subsidence Related to Natural Gas Infrastructure in the Sacramento-San Joaquin Delta	10/8/2014 – 7/31/2017	\$325,000	Yes

**FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC's reviewed was \$17,217,233.00. It was beyond the scope of the review to make conclusions as to whether CEC justifications for the contract were legally sufficient. For all PSC's reviewed, the CEC provided specific and detailed factual information in the written justifications as to how each of the three contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CEC PSC's complied with civil service laws and board rules.

**Mandated Training**

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment. (Gov. Code § 11146.3.)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the CEC mandated training program that was in effect during the compliance review period. While the CEC supervisory training and sexual harassment was found to be in compliance, the ethics training was found to be out of compliance.

## **FINDING NO. 6 – Ethics Training Was Not Provided for All Filers**

- Summary:** The CEC did not provide ethics training to 18 of its existing 210 filers.
- Criteria:** New filers must be provided ethics training within six months of appointment. Existing filers must be trained least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).) Course content must be approved by the Fair Political Practices Commission and the Attorney General. (Gov. Code, § 11146.4, subd. (c).)
- Severity:** Very Serious. The department does not ensure its filers are aware of prohibitions related to his or her official position and influence.
- Cause:** The CEC states that manual tracking of ethics training completion resulted in an inadvertent oversight in the reporting of staff's ethics training completion.
- Action:** The CEC has submitted a corrective action plan with supporting documentation for ensuring compliance in meeting the mandatory training requirements of Government Code section 11146.3, subd (b); therefore, no further action is required at this time.

### **DEPARTMENTAL RESPONSE**

The CEC written response is attached as Attachment 1.

### **SPB REPLY**

Based upon the CEC written response, the CEC will comply with the CRU recommendations and findings, and provide the CRU with a written report of compliance verifying that the examination lists have been abolished. The CEC submitted corrective action plans for findings two, three, and six, which were out of compliance.

It is further recommended that the CEC continue to comply with the afore-stated recommendations and submit to the CRU a written report of compliance within 60 days of the Executive Officer's approval of this report.

## CALIFORNIA ENERGY COMMISSION

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April 29, 2016

Alton Ford, Compliance Review Manager  
State Personnel Board  
Policy and Compliance Review Division  
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RE: California Energy Commission Compliance Review Draft Report Received on April 11, 2016

Dear Mr. Ford,

The California Energy Commission (CEC) is in receipt of the draft report of the State Personnel Board's (SPB) compliance review of the CEC's personnel practices during the period of December 2014 through August 2015.

In response to the compliance review conducted by the SPB and the draft report released on April 11, 2016, the CEC submits the following responses to the SPB's findings:

**Finding No. 1 – Complete Job Analyses Were Not Developed or Used for the Examination Process**

**Cause:** Lack of examination resources.

**Resolution:** The CEC has numerous departmental specific classifications for which it must conduct examinations. The CEC acknowledges that 7 of the 17 examinations reviewed by SPB's Compliance Review Unit did not have a typical job analysis (JA) developed. Although the examinations were not documented with all of the details required of a typical JA, a committee-based JA, developed in accordance with Appendix 5 of the Job Analysis Handbook (attached), which included the required linkage and analysis, was completed for all 7 of the examinations prior to selecting the best testing option. In part, CEC staff was influenced by previous practice which was believed to be acceptable to SPB. Please note that in 2013, during its baseline compliance review of the CEC's examinations and appointments, the CEC provided the SPB with committee-based JAs for some of its examinations and was found to have no deficiencies in its administration of examinations or appointments.

The CEC has implemented a corrective plan to ensure that a typical JA is completed for each examination administered.

**Finding No. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Cause:** Inadvertent oversight related to the handling of multiple applications and lack of awareness by applicants that completion of the questionnaire is only required when applying for state examinations and is not required when applying for vacant positions.

**Resolution:** The CEC acknowledges that out of 121 applications reviewed by SPB, 2 STD 678 application packets had the EEO questionnaire attached. It is the CEC's standard process to remove the EEO questionnaires from each application received prior to forwarding it to the hiring supervisor and will reinforce this practice with relevant staff.

**Finding No. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Cause:** The CEC recognizes the importance of the probationary period and the need to evaluate its employees to ensure the successful performance of the duties assigned. Although the CEC had a process in place for tracking the submission of Individual Development Plans, it did not have a tracking system for probationary reports.

**Resolution:** The CEC acknowledges that out of 22 appointments reviewed by SPB, 3 did not have all of the required probationary reports completed. As indicated in SPB's report, 2 of the 3 appointments did have at least one probationary report completed, while one had a completed Individual Development Plan and Performance Appraisal completed in lieu of the probationary report. At the time of SPB's review, it was the responsibility of each supervisor to track their staff's probationary period and to complete and submit the evaluations. To ensure that all probationary reports are completed in the future, the CEC has instituted a procedure to monitor this process. The procedure includes regular reminders to the supervisor as well as a regular report to upper management of those performance evaluations that have not been completed.

**Finding No. 6 – Ethics Training Was Not Provided for All Filers**

**Cause:** Manual tracking of the Ethics Training completion resulted in an inadvertent oversight in the reporting of staff Ethics Training completion.

**Resolution:** The CEC acknowledges that out of 210 filers, 18 had not taken the required ethics training. Since the SPB compliance review, the CEC has dedicated a significant amount of resources to improving the internal training database to ensure accurate tracking and reporting for all mandatory training. The 18 filers who were identified as not having completed their training are now current for Ethics training. To ensure that all Form 700 Filers have completed Ethics training within the first six months, procedures are now in place to review the Mandatory Ethics training report on a monthly basis and staff and supervisors will be notified immediately for noncompliance.

The CEC appreciates the assistance and guidance offered by the SPB's review and will continue to work toward ensuring consistent application of laws, rules, and regulations in regard to personnel practices. If you have any questions please contact Veronica Rodriguez at (916) 657-4034.

Sincerely,



Robert P. Oglesby  
Executive Director

Attachment