

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016	Business Unit 8660	Department Public Utilities Commission	Priority No. 007
Budget Request Name 8660-007-BCP-2016-A1		Program 6680055-ENERGY	Subprogram

Budget Request Description
 Additional funds needed for legal costs

Budget Request Summary

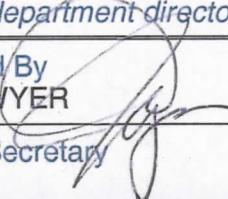
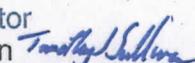
The PUC requests \$6,045,000 in funding from the Public Utilities Commission Utilities Reimbursement Account (fund 0462). The additional funds are needed to retain the services of outside counsel so that the PUC can cooperate with the two criminal investigations currently underway. The State Attorney General's office is leading one of the criminal investigations and, therefore, is conflicted out since they cannot lead and be the respondent in the same case. Moreover, the PUC is a regulatory body, staffing regulatory attorneys who are not equipped with the legal expertise and bandwidth to handle a criminal investigation in-house.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. _____ Date: _____

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Marzia Zafar 	Date 03/29/16	Reviewed By JACK DWYER 	Date 03/29/16
Department Director Timothy J. Sullivan 	Date 03/29/16	Agency Secretary	Date

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature APR 02 2016
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Analysis of Problem

A. Budget Request Summary

The PUC requests \$6,045,000 in funding from the Public Utilities Commission Utilities Reimbursement Account (fund 0462). The additional funds are needed to retain the services of outside counsel so that the PUC can cooperate with the two criminal investigations currently underway. The State Attorney General's office is leading one of the criminal investigations and, therefore, is conflicted out since they cannot lead and be the respondent in the same case. Moreover, the PUC is a regulatory body, staffing regulatory attorneys who are not equipped with the legal expertise and bandwidth to handle a criminal investigation in-house.

B. Background/History

The PUC's mission is to serve the public interest by protecting consumers and ensuring that regulated utilities provide safe and reliable service at reasonable rates. (See generally, Public Utilities Code §§ 451, 701 and 761.) The PUC, over the course of several months in late 2014, was served with two subpoenas, a warrant, and numerous Public Records Act requests calling for the production of millions of documents covering separate lengthy time spans and subject areas. The PUC lacked the expertise and staff resources to respond to so many requests, but was legally obligated to respond expeditiously.

The PUC asked the Attorney General's Office to provide legal assistance and they declined to do so, stating that there would be a conflict of interest or, at the very least, an appearance of a conflict of interest, due to ongoing investigations of the PUC by the Department of Justice. Therefore, the PUC had to obtain outside assistance as quickly as possible due to lack of in-house expertise and the immediate nature of the responses required to comply with the subpoenas and search warrants. There are currently two criminal investigations looking into alleged improper communications between certain PUC staff with regulated entities. One investigation was opened by the State Attorney General's office and the second was opened by the Federal U.S. Attorney. The PUC is cooperating with both agencies and has retained outside counsel to handle these matters. The PUC entered into two contracts with outside legal firms for \$6,291,000 in total:

1. DLA Piper (\$5,187,000 total contract value). DLA Piper represents the PUC in both criminal investigations. This contract was originally with Sheppard Mullin, which then changed to DLA Piper by assignment of the contract in August 2015.
2. Leone & Alberts, formerly doing business as Stubbs & Leone (\$1,104,000 total contract value). This contract was originally for Public Records Act (PRA) litigation, which has now completed; Leone & Alberts now assists with PRA requests related to the two criminal investigations.

The original contracts were budgeted for with existing appropriation, through savings in state operations (including vacancies). The criminal and civil investigations of the PUC by state and federal agencies are ongoing and expanding in scope. From the initial two subpoenas and search warrant, the PUC is now responding to a total of eight subpoenas and three search warrants from state and federal criminal investigators. A substantial amount of legal resources has been required to interview witnesses, research and review millions of documents, and in all other ways comply with all applicable legal obligations in the representation of the PUC. This is expected to continue.

C. State Level Considerations

Not applicable.

D. Justification

As with the original ask, these additional costs are needed to retain the services of outside counsel so that the PUC can cooperate with the two criminal investigations currently underway. The State Attorney General's office is leading one of the criminal investigations and, therefore, is conflicted out since they cannot lead and be the respondent in the same case. Moreover, we do not have the legal expertise, legal resources, or bandwidth to handle them in-house: The PUC, as a regulatory body, hires attorneys with regulatory expertise, not criminal expertise. Consequently, the Commission's attorneys lack the subject matter experience needed to defend the Commission in large and complex state and federal criminal and civil investigations.

Analysis of Problem

There is an ongoing need for additional document production, but this request also includes an estimate of the costs involved in what may be asked of us in the future, given what has occurred in the past. It is common in these situations for investigators to ask for follow-up data requests or to expand document searches to ensure they have all the information they need. Each of these reasonably foreseeable document requests will entail the review of documents from first level reviewers, along with a second level review for complex documents, as well as a certain level of quality control review from second level reviewers. All of the first level review of the documents is being performed by contract attorneys who are being paid \$45/hour and \$67.50/hour for overtime. This is an extremely efficient and cost-effective method for document review.

It also entails extensive IT work to create and manage these databases, as well as the production of privilege logs should documents be found to be privileged. The Commission must also be prepared for additional employee witnesses and the associated work involved with witness production. The Commission must also have counsel for ongoing communications with investigators to ensure the Commission fully understands what is being asked of it, and to communicate to investigators any concerns the Commission may have with on-going document and witness production. Lastly, as with all legal situations, a certain amount of research is required. This request for \$6 million in FY 2016-17 is to fully cover the costs of these two contracts and expected Victim Compensation and Government Claims Board (VCGCB) fees:

1. The DLA Piper costs, including those paid through VCGCB, will be an additional \$5.1 million.
2. The Leone & Alberts costs will be an additional \$523,000.
3. Victim compensation fees of \$463,000 (\$380,000 known fees @18% of claim, and \$83,000 estimated future fees).

The total costs for work done under the two contracts will be \$12.3 million. The total costs for DLA Piper alone will be \$10.3 million, including costs already paid with the original contract, and through VCGCB. The total costs for Leone & Alberts alone will be \$2.1 million. Again, Leone & Alberts deals with Public Records requests related to the two criminal investigations (as a side note, the PUC handles all other Public Records requests in-house), while DLA Piper represents the Commission in cooperating with two separate criminal investigations, one federal and one state. DLA Piper's services include court appearances, court filings, negotiations, responding to discovery—document production—witness preparation, and legal advice.

The following table provides a summary for current VCGCB claims. In addition, we anticipate that up to \$83,000 in VCGCB fees could be generated if the PUC cannot secure and fund an amendment to increase the value of the current DLA Piper contract (current value of \$5.2 million) by the end of Fiscal Year 2015-16.

<i>Claimant</i>	<i>Date</i>	<i>Amount</i>	<i>Description</i>
Sheppard Mullin	May 1, 2015	1,787,088	Legal fees and costs. Expenses for Sheppard Mullin's claim occurred after the firm was under contract but before the contract amendment was approved to increase the amount above the original \$49,000 contract.
	Fee (18%)	321,676	
DLA Piper	February 26, 2016	277,927	Legal fees and costs; electronic support. Expenses for DLA Piper and Choice Legal paid through these claims occurred during the handoff between Sheppard Mullin to DLA Piper, but prior to DGS's approval of the assignment. Choice Legal runs the database that all CPUC's document production works from, as our IT systems cannot do what needs to be done.
	Fee (18%)	50,027	
Choice Legal/QUIVX	January 16, 2016	47,297	
	Fee (18%)	8,513	
		\$2,112,312	Total VCGCB claims, to date
		\$380,216	Total VCGCB fees

The PUC's cost estimate to cover budget year 2016-2017 (\$6.1 million) is based on the difference between the original contract budget the PUC believed it could absorb (\$5.2 million for Sheppard Mullin/DLA Piper and \$1.1 million for Stubbs & Leone) and the new estimated budget need for this work. This total budget

Analysis of Problem

need was estimated based on how much more we have left to produce for the courts as well as public records requests related to the two criminal investigations. The two criminal investigations still require us to produce approximately another one million documents which all have to be retrieved and reviewed, plus the court filings and court appearances. It is safe to say that, for now, the bulk of the costs have to do with discovery (i.e. document production). In comparison, DLA Piper has produced 850,000 documents thus far.

Approving this request allows the PUC to continue cooperating in these two criminal investigations, without making cuts to its planned operating budget for FY 2016-17. Through its outside legal representation, the PUC is cooperating by responding to discovery requests, public records requests, and court appearances.

E. Outcomes and Accountability

Not applicable.

F. Analysis of All Feasible Alternatives

Alternative #1: Absorb costs through state operations budget cuts.

In 2015-16, the PUC absorbed the original budgeted amounts of the DLA Piper and Leone & Alberts contracts through state operations savings (including salary savings); these cutbacks can be continued, and the PUC can look into additional cuts to state operations.

Pros:

- This option does not require additional funding.

Cons:

- State operations budget cuts would need to be made to account for the additional budget need; this could result in delayed projects (including delays in other contracts), cuts to travel and other operating costs, and positions left vacant for budget savings. The results of these cuts could be cutbacks in enforcement and compliance activities, and delays in responding to consumer complaints will continue to erode the service the PUC is in existence to provide, risking safety and critical programs.

Alternative #2: Hire in-house criminal attorneys

The PUC could hire several in-house criminal attorneys to handle these investigations and required document review and production.

Pros:

- Presumably, hiring in-house attorneys could cost less.

Cons:

- The PUC is a regulatory body and once these investigations end, there is no need for such expertise.
- Hiring in-house attorneys takes time that we do not have at this point. The State AG is already complaining that we are not responding in a timely enough manner to discovery.

Alternative #3: Replace current outside legal counsel

The PUC could attempt to find legal counsel at a lesser cost, though the PUC did attempt to do this with the original contract and hired the less costly counsel.

Pros:

- The PUC may be able to find less costly counsel.

Cons:

- Hiring in-house attorneys takes time that we do not have at this point. The State AG is already complaining that we are not responding in a timely enough manner to discovery.

Analysis of Problem

G. Implementation Plan

Not applicable.

H. Recommendation

The PUC recommends the approval of \$6,045,000 in additional funding from the Public Utilities Commission Utilities Reimbursement Account (fund 0462) to support the continued retention of outside counsel to facilitate the PUC's cooperation with the two criminal investigations currently underway. The State Attorney General's office is leading one of the criminal investigations and, therefore, is conflicted out since they cannot lead and be the respondent in the same case. Moreover, the PUC is a regulatory body, staffing regulatory attorneys who are not equipped with the legal expertise and bandwidth to handle a criminal investigation in-house.

None of the alternatives would allow the PUC to seamlessly cooperate with the two criminal investigations and resulting public records requests in an acceptably timely manner, without seriously compromising our mission to provide for public safety and accessibility.

Department of Finance
2016-17
Finance Letter Worksheet

8660-001-0462-2016
Prop 98: N

DEPT: Public Utilities Commission
STATE OPERATIONS

8660-102-BCP-BR-2016-A1

Augmentation for Criminal Investigation - Outside Counsel Support

Proposal Summary

Add resources for criminal defense attorney contracts.

Category Changes

Operating Expenses and Equipment
Total Category Changes

Positions	Whole Dollars
0.0	6,045,000
0.0	\$6,045,000

Program Changes

6680 Regulation of Utilities
6680055 Energy
Total Program Changes

0.0	6,045,000
0.0	6,045,000
0.0	\$6,045,000

Fund Changes

Amount Funded by 8660-001-0462-2016
Net Impact to Item

0.0	6,045,000
0.0	\$6,045,000

ASM CONSULTANT: CG
SEN CONSULTANT: FCB
DOF ANALYST: Kathy Madison
LAO DIRECTOR: BB
SCENARIO: April Revision
VERSION: Finance Working
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