9. Managing General Liability and Workers' Compensation Costs

- **The Public Utilities Commission incurs large costs each year to pay general liability and workers' compensation claims. In FY 2004-2005, the Public Utilities Commission paid $1.6 million for general liability claims and litigation settlement or judgment costs and $3.1 million for workers' compensation claims costs.**

- **Between FY 2000-2001 and FY 2004-2005, the Public Utilities Commission paid $6.2 million to settle claims and litigation cases. Despite being self-insured and exposed to large general liability costs, the Public Utilities Commission has no risk management program to protect the Public Utilities Commission from unnecessary exposure to claims and litigation.**

- **The Clean Water, Water, and Hetch Hetchy Enterprises do not have formal programs to evaluate the common causes of claims and to develop programs to reduce the risk of exposure. Some common causes of claims resulting from water or sewer damage can be addressed through the Water and Clean Water Enterprises' maintenance and repair programs. However, other claim categories, such as "premises liability" or "property damage" are non-specific. The Public Utilities Commission has no procedure to identify causes behind such claims to identify and address root causes. Although the City Attorney's Office manages claims and provides information to the Public Utilities Commission about claims, the Public Utilities Commission should develop its own program to reduce the risk of claims exposure.**

- **The Public Utilities Commission faces significant risk from high workers' compensation costs and outstanding liability. From FY 1999-2000 through FY 2003-2004, the Public Utilities Commission's accrued liability for workers' compensation has increased by 204 percent, a compound growth rate of 32 percent annually, from $6.17 million in FY 1999-2000 to $18.77 million at the close of FY 2003-2004.**

- **In FY 2004-2005, 377 Public Utilities Commission employees, or 17.8 percent of 2,116 employees, had an open workers compensation claim. The Public Utilities Commission only implemented a department-wide modified duty program to return injured workers to work in FY 2004-2005 and has not developed measures to determine if the program is effective. The Public Utilities Commission's Director of Human Resource Services should not only measure the effectiveness of the modified duty program but should also work with the Department of Human Resources Workers' Compensation Division to determine best practices.**

The Public Utilities Commission incurs large costs each year to pay general liability and workers' compensation claims. In FY 2004-2005, the Public Utilities Commission paid $1.5 million for general liability claims and litigation settlement or judgment costs and $3.1 million for workers' compensation claims costs. The Public Utilities Commission is self-insured for general liability and for workers' compensation, and pays general liability and workers compensation claims costs from operating revenues.

The Public Utilities Commission has a health and safety program to reduce the risk of injury and the associated workers' compensation costs, and has recently created a position responsible for managing a modified duty program to return injured workers to work. However, the Public Utilities Commission has no formal risk management program to manage the risks contributing to general liability claims, such as property damage and vehicle accident risks.

Managing General Liability Claims and Litigation Settlements or Judgments

The Public Utilities Commission does not have a designated risk manager to manage the Public Utilities Commission's exposure to claims and legal judgements resulting from the Public Utilities Commission's activities. The City Attorney's Office manages claims filed against the Public Utilities Commission and litigation resulting from such claims. The Public Utilities Commission pays for the City Attorney's services through an annual work order. The costs of claims and litigation settlement and of legal judgements are paid from the fund balances of the three enterprises, the Water, Clean Water, and Hetch Hetchy Water and Power Enterprises.

The Public Utilities Commission does not engage an actuary to determine the probability of claims and litigation and to calculate the required reserves to cover such claims and litigation costs. Instead, the City Attorney's Office analyzes outstanding or potential claims and litigation and the financial auditor includes the estimated liability in the Clean Water, Water, and Hetch Hetchy Enterprises' financial statements. As shown in Table 9.1, accrued general liability for each of the three enterprises varies from year to year with no pattern of increase or decrease.

Table 9.1

Increases and Decreases in Annual Estimated Accrued General Liability for the Water, Clean Water, and Hetch Hetchy Water and Power Enterprises

FY 1999-2000 through FY 2003-2004

	FY 1999-2000	FY 2000-2001	FY 2001-2002	FY 2002-2003	FY 2003-2004	Average Annual Increase/ (Decrease) in Accrued General Liability
Water Enterprise	$13,380,000	$7,023,000	$4,968,000	$3,823,000	$6,111,000	(18%)
Clean Water Enterprise	433,000	1,086,000	4,728,000	974,000	4,761,000	82%
Hetch Hetchy Enterprise	5,923,000	6,602,000	3,620,000	143,000	169,000	(59%)
	$19,736,000	$14,711,000	$13,316,000	$4,940,000	$11,041,000	(14%)

Source: Audited Financial Statements

The accrued liability for each of the three enterprises includes current and long term damage and claims liability. As noted in the Water, Clean Water, and Hetch Hetchy Water and Power Enterprises' audited financial statements, the enterprises manage their risk of loss by setting aside assets for claims settlements and recording a liability representing an estimate of the cost of all outstanding claims and incurred but not reported claims. Claim liabilities are recorded when it is probable that a loss has occurred and the amount of loss can be reasonably estimated. Because the cost of claims cannot initially be calculated with certainty, estimated claims costs vary over time. The current and long term claims liability recorded in the audited financial statement are re-evaluated periodically to adjust for recently settled claims and other factors.

The Public Utilities Commission's Claims Management

Claims against the Public Utilities Commission are submitted to the Controller and then forwarded to the City Attorney's Office. Under the Administrative Code, the City Attorney has the authority to determine if a claim is insufficient or to reject a claim, and may settle claims in amounts of less than $25,000. The City Attorney may also settle litigation with a settlement amount of less than $25,000 with the approval of the Public

Utilities Commission General Manager. The Board of Supervisors must approve payment of claims and legal settlements in an amount greater than $25,000.

Claims and their disposition, including settlement amounts, are recorded by general category in the City Attorney's Office database. From FY 2000-1001 through FY 2004-2005, the Public Utilities Commission paid $3.0 million for claims, as shown in Table 9.2.

Table 9.2

Actual Claims Payments by the Water, Clean Water, and Hetch Hetchy Water and Power Enterprises

FY 2000-20001 to FY 2004-2005

	FY 2000-2001	FY 2001-2002	FY 2002-2003	FY 2003-2004	FY 2004-2005	Total Claims Costs FY 2000-2001 to FY 2004-2005
Water Enterprise	$213,519	$453,453	$358,054	$527,487	$170,515	$1,723,028
Clean Water Enterprise	379,743	439,537	207,508	117,716	102,709	1,247,213
Hetch Hetchy Enterprise	7,009	1,014	35,493	8,260	6,035	57,811
Public Utilities Commission Administration	16,671	7,778	14,385	180	0	39,014
	$616,943	$901,782	$615,440	$653,643	$279,259	$3,067,066

Source: City Attorney's Office

As shown in Table 9.2, the Water and Clean Water Enterprises pay the majority of claims costs each year. Between FY 2000-2001 and FY 2004-2005, the majority of Water Enterprise claims comprised three general categories: (a) premise liability, (b) street maintenance, and (c) vehicle-related claims. The majority of Clean Water Enterprise claims comprised two general categories: (a) property damage related to sewers, and (b) street maintenance.

From FY 2000-2001 through FY 2004-2005, the Public Utilities Commission paid $3.2 million in litigation judgment or settlement costs, as shown in Table 9.3.

Table 9.3

Actual Litigation Judgment or Settlement Payments by the Water, Clean Water, and Hetch Hetchy Water and Power Enterprises

FY 2000-20001 to FY 2004-2005

	FY 2000-2001	FY 2001-2002	FY 2002-2003	FY 2003-2004	FY 2004-2005	Litigation Costs FY 2000-2001 to FY 2004-2005
Water Enterprise	$284,000	$395,770	$162,500	$237,462	$1,247,294	$2,327,026
Public Utilities Commission Administration	338,105	0	25,000	0	30,000	393,105
Clean Water Enterprise	43,508	0	98,500	200,000	25,235	367,242
Hetch Hetchy Enterprise	0	0	51,578	1,700	45,000	98,278
Total	$665,612	$395,770	$337,578	$439,162	$1,347,529	$3,185,651

Source: City Attorney's Office

The Public Utilities Commission paid litigation judgment or settlement costs for a variety of causes, including property damage, breach of contract, and employee or labor related causes. In FY 2004-2005, the Public Utilities Commission paid $1,000,000 in two major litigation cases, including $500,000 in settlement costs for litigation involving a pedestrian and a Public Utilities Commission vehicle, and $500,000 in settlement costs for litigation involving street damage from Water Enterprise activities.

The Clean Water, Water, and Hetch Hetchy Enterprises do not have formal programs to evaluate the common causes of claims and to develop programs to reduce the risk of exposure. Some common causes of claims resulting from water or sewer damage can be addressed through the Water and Clean Water Enterprises' maintenance and repair programs. However, other claim categories, such as "premises liability" or "property damage" are non-specific. The Public Utilities Commission has no procedure to identify causes behind such claims to identify and address root causes. Although the City Attorney's Office manages claims and provides information to the Public Utilities Commission about claims, the Public Utilities Commission should develop its own program to reduce the risk of claims exposure.

Designating a Risk Manager

The Public Utilities Commission should designate the Assistant General Manager, Business Services, as the risk manager for the Public Utilities Commission. Specific functions could be delegated to the appropriate administration or operating division staff or committees.

Managing risk in this context means managing the risk of loss, such as costs of property damage, resulting from the Public Utilities Commission's activities. Risk management includes:

- Identifying the types of risks which have or potentially could result from the Public Utilities Commission's activities.
- Evaluating the potential for loss, either because the Public Utilities Commission has frequent exposure to specific types of risks, such as vehicle-related accidents, or certain risks could result in high costs, such as significant property damage from flooding.
- Planning and implementing a loss prevention program to reduce risk exposure, such as drivers training and safety programs to reduce vehicle accidents.

The designated risk manager should (a) coordinate loss prevention programs among the Clean Water, Water, and Hetch Hetchy Enterprises and (b) develop measures and reporting mechanisms to monitor the effectiveness of the loss prevention program. Also, the designated risk manager should conduct trend analyses to track the Public Utilities Commission's actual claims and litigation experience, annual claims and litigation costs, and reported liability in the audited financial statements. The General Manager should report quarterly to the Public Utilities Commission on the risk management measures and the trend analysis.

The Public Utilities Commission's Workers' Compensation Costs

The Public Utilities Commission is self-insured for workers' compensation claims, as is the City of San Francisco as a whole. The Department of Human Resources Workers' Compensation Division manages workers' compensation claims on behalf of City departments. The Public Utilities Commission pays the Department of Human Resources for claims management and for the medical, indemnity, and other direct costs of workers' compensation.

Workers' Compensation Claims, Liability, and Annual Payments

The Public Utilities Commission faces significant risk from high workers' compensation annual expenditures and outstanding liability. From FY 1999-2000 through FY 2003-2004, the Public Utilities Commission's accrued liability for workers' compensation has increased by 204 percent, with a compound growth rate of 32 percent annually, from $6.17 million in FY 1999-2000 to $18.77 million in FY 2003-2004, as shown in Table 9.4.

Table 9.4

Estimated Annual Increase in the Public Utilities Commission's Current and Long Term Accrued Workers' Compensation Liability

FY 1999-2000 through FY 2003-2004

	FY 1999-2000	FY 2000-2001	FY 2001-2002	FY 2002-2003	FY 2003-2004	Annual Growth Rate
Current Liability	$1,617,000	$1,695,000	$2,757,000	$3,287,000	$3,854,000	24%
Long Term Liability	4,553,000	5,259,000	8,870,000	12,257,000	14,917,000	35%
	$6,170,000	$6,954,000	$11,627,000	$15,544,000	$18,771,000	32%

Source: Audited Financial Statements

The City contracts with an actuary, Tillinghast-Towers Perrin, to evaluate the City's current and long term workers' compensation liability and identify the needed reserves to cover the liability. According to the actuarial report, the Public Utilities Commission's accrued workers' compensation liability include (a) case reserves, or the amount expected to be paid in the future based on the known facts of open claims, (b) development of known claims, or the expected increases in known claims resulting from changing conditions or information, and (c) incurred but not reported claims, which includes late-reported claims and re-opening of claims.

Over the past three years, the Public Utilities Commission's actual annual workers' compensation payments have decreased from $4.1 million in FY 2002-2003 to $3.1 million in FY 2004-2005.

Table 9.5

The Public Utilities Commission's Workers' Compensation Payments FY 2002-2003 through FY 2004-2005

	FY 2002-2003	FY 2003-2004	FY 2004-2005	Average Annual Percentage Increase/ (Decrease)
Indemnity	$1,939,454	$1,702,969	$1,632,681	(8%)
Medical	1,862,064	1,446,755	1,324,658	(16%)
Vocational Rehabilitation	244,188	82,148	118,558	(30%)
Other Expenses	63,853	57,811	40,794	(20%)
Total Workers Compensation Payments	$4,109,560	$3,289,684	$3,116,691	(13%)

Source: Department of Human Resources Workers' Compensation Division

The number of new workers' compensation claims and total open claims has also decreased, but the number of open workers' compensation claims equals 18 percent of the total number of full time equivalent positions.

Table 9.6

Total Open Workers' Compensation Claims

FY 2002-2003 through FY 2004-2005

	As of June 30, 2003	As of June 30, 2004	As of June 30, 2005
Total Workers Compensation Claims	389	372	377
Total PUC Full Time Equivalent Positions	1,977	2,118	2,116
Workers Compensation Claims as a Percent of Positions	20%	18%	18%

Source: Department of Human Resources Workers' Compensation Division

The number of new workers compensation claims filed in FY 2004-2005 decreased compared to FY 2002-2003. In FY 2002-2003, 277 of the 389 workers compensation claims were new claims but in FY 2004-2005, 244 of the 377 workers compensation claims were new claims, representing an annual average decrease of six percent.

Workers' compensation claims consist of claims for medical expenses only and claims that require indemnity payments, such as temporary disability payments. In FY 2004-2005, the number of indemnity claims equaled 73 percent of all open claims and 65 percent of all new claims.

Injuries that result in lost work days drive up workers' compensation costs, not only due to indemnity payments, such as payments for temporary disability, but also for lost productivity or back filling vacant positions. As noted in Table 9.7, the number of lost work days per 100 employees has decreased between 2002 and 2004.

Table 9.7

Number of Lost Work Days due to Work Injuries per 100 Employees by Division

Calendar Year 2002 to Calendar Year 2003

	Calendar Year 2002	Calendar Year 2003	Calendar Year 2004	Annual Increase/ (Decrease)
Water Supply and Treatment (Water Enterprise)	274.6	218.9	263.0	(2%)
City Distribution Division (Water Enterprise)	975.5	579.6	269.5	(47%)
Water Pollution Control (Clean Water Enterprise)	672.6	449.0	572.5	(8%)
Hetch Hetchy Enterprise	45.1	153.7	143.1	78%
PUC Administration	45.5	108.5	1.3	(83%)

Source: Public Utilities Commission's Annual Reports to the California Occupational Health and Safety Agency

Although the Public Utilities Commission's annual workers' compensation payments, new claims, and lost work days have decreased over the past three years, the Public Utilities Commission's accrued workers' compensation liability has increased significantly over time, as shown in Table 9.4. While workers' compensation accrued liability represents the Public Utilities Commission's workers' compensation costs over time, annual workers' compensation payments represent current year expenditures only.

The State of California implemented workers' compensation reforms in April, 2004, that included a two-year cap on temporary disability payments for most types of injuries, incentives for workers to return to work, and stricter guidelines for determining permanent disability. Further, temporary disability and permanent total disability benefit payments have increased annually in 2003 through 2005. According to Tillinghast-

Towers Perrin, the new State law provisions are expected to result in FY 2004-2005 workers' compensation savings of 9 percent and should result in additional savings in future years.

The Public Utilities Commission's Injury and Illness Prevention Program

The most effective method of reducing workers' compensation costs is to reduce workplace injuries. The Public Utilities Commission has an established injury and illness prevention program that is administered by the Public Utilities Commission's Human Resource Service Health and Safety Unit.

The injury and illness prevention program outlines the General Manager's, Assistant General Managers', division and bureau managers', and supervisors' and employees' accountability and responsibility for maintaining effective health and safety programs. managers the injury and illness prevention program. The components of the injury and illness prevention program include:

- Evaluating and enforcing employees' compliance with health and safety requirements;
- Training manuals and programs to educated employees on health and safety policies and injury prevention procedures;
- Assessing and correcting potential hazards; and
- Investigating and accidents.

The Public Utilities Commission-wide safety committee meets monthly. A review of agenda items shows that managers from the divisions with the highest incidence of work-related injuries routinely attended the safety committee meetings. Also, workers' compensation costs are charged to the appropriate budgets so that managers become responsible for these costs in their budgets.

The Public Utilities Commission's Health and Safety Manager has identified some continuing weaknesses in the illness and injury loss prevention program, including a need to strengthen the relationship with the Capital Improvement Program and a need to continue to reduce the incidence of injuries in the City Distribution Division.

The Public Utilities Commission's Modified Duty Program

The Public Utilities Commission has only recently begun to actively manage workers' compensation claims by returning injured workers to modified duty. Prior to FY 2004-2005, each Public Utilities Commission division was responsible for identifying opportunities for returning injured workers to modified duty within the division. In FY 2004-2005, the Public Utilities Commission created a new position in the Human Resource Services Section to manage the modified duty program.

The Public Utilities Commission has a written policy covering the modified duty program. According to the Workers' Compensation Manager, each workers' compensation case is handled individually. Health and Safety Unit staff, in conjunction with the employee's supervisor identify opportunities to return the injured worker to modified duty. Currently, the Public Utilities Commission does not have a centralized job bank, so that injured workers are only returned to work within their own division if a modified duty assignment is identified.

Measuring and Tracking the Effectiveness of the Illness and Injury Prevention and Modified Duty Programs.

The Public Utilities Commission needs to develop better measures and tracking of the illness and injury prevention and modified duty programs to ensure that these programs are effective. The financial measures (expenditures) provide conflicting results. The financial statements show that the Public Utilities Commission's accrued workers compensation liability had increased annually by 32 percent, from $6.17 million in FY 1999-2000 to $18.77 million in FY 2003-2004. On the other hand, between FY 2002-2003 and FY 2004-2005, the Public Utilities Commission's annual workers' compensation payments decreased by approximately 24.4 percent, from $4.1 million in FY 2002-2003 to $3.1 million in FY 2004-2005.

The Department of Human Resources Workers' Compensation Division currently provides trends analysis in reported claims by quarter. The Human Resource Services Health and Safety Unit prepares annual (a) illness and injury rate reports, based on data provided to the California Occupational Safety and Health Administration, and (b) injury analysis reports of the nature and cause of injuries.

The Director of Human Resource Services should measure the performance of the modified duty program and report annually to the Public Utilities Commission. One measure would be to track temporary disability payments prior to the formal implementation of the modified duty program and periodically thereafter, to determine if the modified duty program has resulted in decreases in temporary disability payments. This measure should be adjusted to account for changes in State law.

Also, the Director of Human Resource Services should develop best practices for the modified duty program. The City of San Francisco has no citywide policy for a modified duty program, and each City department develops the program based on department resources. The Director of Human Resource Services should work with the Department of Human Resources Workers' Compensation Division to identify successful modified duty programs in other agencies.

The Director of Financial Services should report annually to the Public Utilities Commission on the accrued workers' compensation liability, including (a) increases or decreases in accrued liability over time and (b) causes for increases or decreases in accrued liability.

Conclusions

The Public Utilities Commission has failed to develop a risk management program to manage the Public Utilities Commission's exposure to claims and legal judgements resulting from the Public Utilities Commission's activities, despite paying more than $6.2 million over the past five years to settle claims or litigation cases. Because responsibility for risk management should reside at the executive management level, the General Manager needs to designate the Assistant General Manager, Business Services as the risk manager for the Public Utilities Commission.

The Public Utilities Commission has only recently begun to actively manage workers' compensation claims by returning injured workers to modified duty. The Public Utilities Commission lacks any measures to determine if the modified duty program is effective. The Public Utilities Commission needs to develop better measures and tracking of the illness and injury prevention and modified duty programs to ensure that these programs are effective.

Recommendations

The Public Utilities Commission General Manager should:

9.1 Designate the Assistant General Manager, Business Services, as the risk manager for the Public Utilities Commission.

9.2 Direct the Assistant General Manager, Business Services to:

(a) Coordinate loss prevention programs among the Clean Water, Water, and Hetch Hetchy Enterprises.

(b) Develop measures and reporting mechanisms to monitor the effectiveness of the loss prevention program.

(c) Conduct trend analyses to track the Public Utilities Commission's actual claims and litigation experience, annual claims and litigation costs, and reported liability in the audited financial statements.

9.3 Report quarterly to the Public Utilities Commission on (a) the status of the loss prevention programs, (b) the risk management measures, and (c) the trend analysis.

The Director of Human Resource Services should:

9.4 Measure the performance of the modified duty program and report annually to the Public Utilities Commission on the performance measures.

9.5 Work with the Department of Human Resources Workers' Compensation Division to identify successful modified duty programs in other agencies and develop best practices for the Public Utilities Commission's modified duty program.

The Director of Financial Services should:

9.6 Report annually to the Public Utilities Commission on the accrued workers' compensation liability, including (a) increases or decreases in accrued liability over time and (b) causes for increases or decreases in accrued liability.

Costs and Benefits

The Public Utilities Commission would reduce its risk of loss, such as property damage, by developing a formal risk management program to identify exposure and develop a loss prevention program. In FY 2004-2004, the Public Utilities Commission paid $1.6 million in claims and litigation settlement costs. A five percent decrease in claims and litigation payments would save the Public Utilities Commission $80,000 annually.

By better identifying modified duty program best practices and performance, the Public Utilities Commission could return injured workers to work and reduce workers' compensation payments. Based on $1.6 million in workers' compensation indemnity payments in FY 2004-2005, a five percent decrease in workers' compensation indemnity payments would save the Public Utilities Commission $80,000 annually.