

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-281
Administrative Law Judge Division
September 13, 2012

RESOLUTION

RESOLUTION ALJ-281. Adopting Intervenor Rates for 2012 and Addressing Related Matters.

SUMMARY

In today's resolution, we adopt a 2.2% Cost-of-Living Adjustment for work performed by intervenors in calendar year 2012. The hourly rate ranges adopted today are shown in Table 1.

BACKGROUND

Decision (D.) 08-04-010, directs the Chief Administrative Law Judge (CALJ), in consultation with the Commission President, to prepare a proposed resolution recommending a Cost-of-Living Adjustment (COLA) for hourly rates to be applied to intervenor work performed in 2009. The resolution was expected to consider the same federal inflation indexes that were used to compute the 2008 COLA.

Pursuant to D.08-04-010, the Commission has adopted annual resolutions addressing what COLA would be appropriate for work performed in calendar years 2009, 2010, and 2011. For reasons discussed in those resolutions, the Commission declined to grant a COLA for any of those years. Thus, the hourly rate ranges applicable to intervenor work have not been adjusted since 2008.

The prior resolutions reviewed various federal inflation indices, such as the Social Security Administration (SSA) COLA and Bureau of Labor Statistics (BLS) data for consumer prices and wages to calculate an appropriate COLA. Appendix A to this resolution contains a table showing current and recent (2002-2012) SSA COLAs and other price and wage indices.

No single index was determinative. Rather, in Resolutions ALJ-235, ALJ-247, and ALJ-267, we based our judgment on a review both of indices measuring inflation in consumer prices and wages, and of data regarding the state and national economy. Since there is no current index that specifically targets rates for services by regulatory professionals (attorneys, engineers, economists, scientists, etc.), we continue to exercise our informed judgment and use the same analysis here.

The [Social Security Act](#) specifies a formula for determining each COLA. According to the formula, COLAs are based on increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). CPI-Ws are calculated on a monthly basis by the Bureau of Labor Statistics. Under the formula, a COLA effective for December of the current year is equal to the percentage increase (if any) in the average CPI-W for the third quarter of the current year over the average for the third quarter of the last year in which a COLA became effective. If there is an increase, it must be rounded to the nearest tenth of one percent. If there is no increase, or if the rounded increase is zero, there is no COLA. As shown below, the average CPI-W for the third quarter of 2011 is +3.6%. Because there was an increase in the CPI-W from the third quarter of 2008 (the last previous year in which a COLA became effective) through the third quarter of 2011, there is a SSA COLA for December 2011.

Month	CPI-W for:	
	2008	2011
July	216.304	222.686
August	215.247	223.326
September	214.935	223.688
Total	646.486	669.700
Average (rounded to the nearest 0.001)	215.495	223.233

If we were to rely exclusively on the CPI-W, as applied under the SSA formula, we would adopt a COLA of 3.6% for intervenor work performed in calendar year 2012.¹ However, we evaluate additional indices and other factors when considering whether COLA increases are warranted for intervenor work.

¹ The calculation is: $(223.233 - 215.495) / 215.495 = 3.6\%$.

For example, Resolution ALJ-235 (March 12, 2009) rejected a COLA for 2009 intervenor work, electing instead to apply the same hourly rates ranges adopted in D.08-04-010. Our resolution was based on our informed judgment regarding the stagnant state and national economy and an actual decline in the CPI-W in the fourth quarter of 2008.

Similarly, Resolution ALJ-247 (April 8, 2010) did not adopt a COLA for 2010 intervenor work due to a -2.1 CPI-W during the standard review period and other negative economic trends, most notably, high unemployment rate in California (12.4%), high foreclosure rates, and slow or no growth for California. We therefore retained the hourly rate ranges adopted in D.08-04-010.

Most recently, Resolution ALJ-267 (March 24, 2011) did not adopt a COLA for 2011 intervenor work. We again noted the lack of inflation and the poor economic outlook in general.

Comments on Draft Resolution

On June 12, 2012, we issued for comment a draft resolution that would have again rejected COLAs for calendar year 2012 intervenor work. The resolution applied similar reasoning to that in the prior resolutions discussed above, i.e., continued economic weakness and low level of inflation in the general economy.

A group referring to themselves as “Joint Intervenors” filed opening comments. In the order listed in their comments, the Joint Intervenors are The Utility Reform Network (TURN), Utility Consumers Action Network, The Greenlining Institute, Center for Accessible Technology, National Asian American Coalition, Black Economic Council, and Latino Business Chamber of Commerce of Greater Los Angeles. In addition, two of the Joint Intervenors (The Greenlining Institute and Center for Accessible Technology) jointly filed separate opening comments. One of the Joint Intervenors (TURN) filed reply comments. Finally, two parties who had not filed opening comments did file replies, namely, Consumer Federation of California and Pacific Bell Telephone Company d/b/a AT&T California. (The latter is the only non-intervenor commenting on the draft resolution.)

Intervenor commenters all criticize the reasoning of the draft resolution and support adoption of a COLA for intervenor work in 2012. Their principal objections and recommendations are as follows:

- The Commission has failed to update the “market rate” study on which the hourly rate ranges were originally predicated. In D.08-04-010, the Commission postulated that such a study should be performed “within the next two to

three years” in order to ensure the adopted ranges continued to track the market rates for regulatory services, as required by statute. (*See* Pub. Util. Code § 1806.)

- The Commission, contrary to D.08-04-010, seems to be relying on information beside inflation indices to justify continued rejection of a COLA. Various inflation indices and the Commission’s own rate case decisions reasonably justify an upward adjustment to hourly rates.
- If the Commission were to consider wage escalation for San Francisco metropolitan area attorneys as measured by the BLS for 2008 to 2011, the Commission would find that the annual mean wages had increased by 10% over the three-year period. The BLS wage data better approximate hourly compensation for regulatory professionals than do inflation indices for the general economy.
- The CPI-W, though less precisely targeted than the BLS wage data, shows a 5% increase for 2008 to 2011, and would support a 5% COLA for 2012.
- In D.09-03-025, a general rate case decision for Southern California Edison Company (Edison), the Commission granted across-the-board increases for all operations, including the law department, for attrition years 2010 (4.25%) and 2011 (4.35%). To compensate Edison and other utilities for increases in their legal costs while denying corresponding compensation to intervenor representatives would place intervenors at a disadvantage to utilities, contrary to the statutory goal of encouraging intervenor participation. (*See* Pub. Util. Code § 1801.3(b).)

AT&T California supports the draft resolution. Regarding the recommendations of intervenor commenters, AT&T California believes these recommendations inappropriately rely on a single inflation index. AT&T California does not reply to Joint Intervenors’ assertions regarding cost increases reflected in the Commission’s general rate case decisions. (Under the Uniform Regulatory Framework, the Commission no longer sets rates for most telecommunications services.)

Discussion

The 2009-2011 hourly rate ranges and COLAs for intervenor work have been addressed in Resolutions ALJ-235, ALJ-247, and ALJ 267. We will not revisit them here. In today’s resolution, we consider only the adoption of hourly rate ranges for 2012 and related matters. For that purpose, we reject the proposal of intervenors that we consider inflation for the entire period from 2008 to 2011, but we agree with intervenors that the weight of evidence supports a COLA for intervenor work performed in 2012.

In particular, we are persuaded by regulatory cost increases granted utilities (as reflected by the average increase of 4.30% granted to Edison in its test year 2009 general rate case), and the flat wages of state workers, including those that practice at the

Commission, who have received no hourly rate increases or COLA increases during this period. Under Pub. Util. Code § 1806, the rates paid by both the Commission and public utilities are relevant to the determination of the “market rates” for regulatory services.

We conclude that a 2.2% COLA for 2012 intervenor work is warranted. This figure represents the approximate midpoint between the average increase noted above for services provided to a utility and the 0% increase experienced in the public sector. (We round the actual figure (2.15%) to 2.2% to simplify computation.)

COLAs for 2012 and Resulting Rates

The table below shows the adopted ranges for rates for work performed by intervenor representatives. The rates for 2007 were adopted in D.07-01-009. The rates for 2008 were adopted in D.08-04-010 and were unchanged during 2009-2011.

**Table 1
Hourly Intervenor Rate Ranges for 2007 – 2012²**

Years of Experience	2007 Range	2008 Range	2009 Range	2010 Range	2011 Range	2012 Range
Attorneys:						
0 - 2	\$145-\$200	\$150- \$205	\$150-\$205	\$150- \$205	\$150-\$205	\$155-\$210
3 - 4	\$195-\$230	\$200- \$235	\$200-\$235	\$200-\$235	\$200-\$235	\$205-\$240
5 - 7	\$270-\$290	\$280- \$300	\$280-\$300	\$280-\$300	\$280-\$300	\$285-\$305
8 - 12	\$290-\$345	\$300-\$355	\$300-\$355	\$300-\$355	\$300-\$355	\$305-\$360
13+	\$290-\$520	\$300-\$535	\$300-\$535	\$300-\$535	\$300-\$535	\$305-\$545
Experts:						
All	\$115 - \$390					
0 - 6	\$120-\$180	\$125-\$185	\$125-\$185	\$125-\$185	\$125-\$185	\$130-\$190
7 - 12	\$150-\$260	\$155-\$270	\$155-\$270	\$155-\$270	\$155-\$270	\$160-\$275
13+	\$150-\$380	\$155-\$390	\$155-\$390	\$155-\$390	\$155-\$390	\$160-\$400

D.07-01-009 and D.08-04-010 contain policies and procedures for, among other things:

- justifying higher rates than those generally adopted;
- establishing rates for new representatives, or for representatives who have not had an authorized rate within four years prior to a pending request for compensation;

² See D.08-04-010 for a list of 2006 rates.

- requesting increases greater than those generally adopted; and
- receiving step increases for 2008 and beyond.

We continue these previously adopted policies and procedures.

Hourly Rate Adjustments for 2013 and Beyond

We recognize that the task of performing a comprehensive “market rate study” for regulatory services continues to be problematic in light of uncertainty regarding the state budget and the scope of the task. Accordingly, we need to take steps to improve the process for annual adjustments, if needed, to our hourly rate ranges. We seek a process that reflects reasonable consensus among utilities, intervenors, and other interested parties, and that will improve the objectivity, predictability, and timeliness of any adjustments. To that end, we direct the CALJ to convene a public workshop in the near future to discuss the adjustment process. The workshop may also address any other concerns currently affecting our intervenor compensation program, as determined by the CALJ.

We further direct the CALJ, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for intervenor work performed in 2013. The proposed resolution will use factors relied on previously for this purpose, or on such additional or alternative factors as may result from the public workshop discussed above.

COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today’s resolution was distributed for comment to the affected utilities and other interested parties. Today’s resolution contains various modifications in response to the comments, as noted above.

FINDINGS

1. For work performed in 2012, a 2.2% COLA adjustment is reasonable in light of available information on the economy generally and wage escalation for regulatory services provided by utility and state employees.
2. It is reasonable to allow individuals an annual “step increase” of 5%, twice within each experience level and capped at the maximum rate for that level, as authorized in D.07-01-009.

3. It is reasonable to allow individuals with previously approved hourly rates to request a COLA, consistent with today's resolution, for work performed in calendar year 2012.
4. It is reasonable generally to restrict intervenor rates to the adopted range of rates for any given level of experience.
5. It is reasonable to continue our policy that in no event shall any generally applicable increase in intervenor rates result in rates above the highest adopted rate for that individual's level of experience, in a given year.
6. The rate levels, procedures, and policies herein are consistent with the intervenor compensation statutes (Pub. Util. Code §§ 1801-1812).
7. A comprehensive study of market rates should be conducted as soon as practicable in order to directly measure current market rates for regulatory services.
8. The Chief Administrative Law Judge will convene a public workshop in the near future to discuss the adjustment process for hourly rate ranges and COLAs for 2013 and future years, and to address other matters currently affecting the intervenor compensation program.
9. It is reasonable for intervenor work performed in 2013, and for subsequent years in the absence of a market rate study, to consider hourly rate adjustments by Commission resolution.

THEREFORE, IT IS ORDERED that:

1. For work performed in calendar year 2012, intervenors are authorized a 2.2% Cost-of-Living Adjustment (COLA). The hourly rate ranges adopted for 2008, as set forth in Table 1 of this resolution, are adjusted for 2012 to reflect the 2.2% COLA.
2. The 5% step increases authorized in Decision (D.) 07-01-009 shall continue in 2012 and subsequent years. The step increases shall be administered as specified in D.08-04-010.
3. A Cost-of-Living Adjustment may be authorized by future Commission resolution, as described in Finding 9.
4. A public workshop will be scheduled in the near future to discuss the adjustment process for hourly rate ranges and Cost-of-Living Adjustments for 2013 and future years. The workshop may also address any other concerns currently affecting the

intervenor compensation program, as determined by the Chief Administrative Law Judge.

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 September 13, 2012, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

APPENDIX A

**Comparison of Inflation Indexes
(Percent Increase from previous year)
2002-2012**

Year	SSA COLA ¹	CPI-W	BLS CPI ²	BLS Wages ³	Intervenor Rate ⁴	CA Unemployment Rate ⁵	Commission Order ⁶
2002	2.6	--	1.6	0.8	N/A	6.8%	
2003	1.4	--	2.3	5.0	N/A	6.7%	
2004	2.1	--	2.7	3.4	8%	5.9%	Resolution ALJ-184
2005	2.7	--	3.4	5.7	0%	5.1%	D.05-11-031
2006	4.1	--	3.2	5.4	3%	4.8%	D.07-01-009
2007	3.3	--	2.8	N/A	3%	5.9%	D.07-01-009
2008	2.3	--	3.8	N/A	3%	8.4%	D.08-04-010
2009	5.8	+5.80	-0.4	N/A	0%	10.0%	Resolution ALJ-235
2010	0.0	-2.10	1.5	N/A	0%	12.5%	Resolution ALJ-247
2011	0.0	- .63	3.0	N/A	0%	11.5%	Resolution ALJ-267
2012	3.6	+3.60		N/A	2.2%		Resolution ALJ-281

(END OF APPENDIX A)

¹ SSA COLA issued in prior year (i.e., 2009 COLA issued in October 2008). www.ssa.gov.

² BLS - Consumer Price Index (average % change Dec-Dec). <http://www.bls.gov/cpi/>

³ BLS average wage increase for legal profession in the Bay Area.

⁴ Before 2004, the Commission increased rates for individual representatives based on a showing specific to the individual seeking an increase, and only in response to individual requests. Thus, the timing and amount of adopted increases were subject to wide variation among intervenors.

⁵ <http://www.calmis.ca.gov/file/lfmonth/calmr.pdf>

⁶ Commission orders authorizing intervenor rates and addressing other matters.