STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 13, 2013 Agenda ID #11982

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-287

This is the proposed Resolution of Administrative Law Judge (ALJ) Richard Smith regarding adopting intervenor rates for 2013 and addressing related matters. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than April 3, 2013, and reply comments shall be served no later than April 10, 2013. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Smith at rs1@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-287
Administrative Law Judge Division
April 18, 2013

R E S O L U T I O N

RESOLUTION ALJ-287 Adopting intervenor rates for 2013 and addressing related matters.

SUMMARY

In today's resolution, we approve a 2% cost-of-living adjustment (COLA), which we will use in calculating intervenor awards of compensation for work performed in calendar year 2013. The COLA is part of the Commission's on-going implementation of the statutory directive that computation of intervenor compensation "take into consideration the market rates paid to persons of comparable training and experience who offer similar services." Pub. Util. Code § 1806.

The table attached to today's resolution shows the approved hourly rate ranges for work performed in 2013. With rounding, the COLA results in an increase of $5-10/hour for most intervenor representatives.

BACKGROUND

The Commission first established its hourly rate ranges based on compensation data provided by the major utilities.[1] Since then, the Commission has updated the hourly rate ranges annually. Each update adjusted the ranges by means of a cost-of-living adjustment (COLA), adopted after public review and comment.

---

[1] The utility data included compensation paid both to in-house and outside attorneys and non-attorneys. The Commission also considered compensation paid by the State but determined to rely primarily on the utility data in light of the direction in Pub. Util. Code § 1806 that compensation awarded not exceed "the comparable market rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services." (Emphasis added.)

There is no single methodology or source of information on which the Commission has relied in approving a COLA. Instead, the Commission made an informed judgment after reviewing, e.g., various federal inflation indices and the Commission's own inflation forecasts as reflected in current general rate case decisions. (*See generally* Resolution (Res.) ALJ-281 (Sept. 13, 2012) at 1-3.)

During the sharp economic downturn that began in 2008, the Commission declined to approve a COLA for three years in a row (2009, 2010, and 2011).[2] However, intervenors strongly disputed a proposal that the hourly rate ranges for 2012 once again not reflect a COLA.

As discussed in Res. ALJ-281, the Commission concluded that the weight of the evidence supported a COLA for intervenor work performed in 2012. Noting the regulatory cost increases granted utilities, on the one hand, and the flat wages of state employees, on the other hand, the Commission concluded that a 2012 COLA of 2.2% was warranted.[3] The Commission also stated:

> [W]e 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. (Res. ALJ-281 at 6.)

To this end, the Commission directed its Chief Judge to convene a public workshop to discuss the adjustment process, and possibly other concerns affecting the intervenor compensation program, as determined by the Chief Judge. (Res. ALJ-281 at 6.)

---

[2] *See generally* Res. ALJ-235 (March 12, 2009), Res. ALJ-247 (April 8, 2010), and Res. ALJ-267 (March 24, 2011). These resolutions cited declines in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), other negative trends, and the stagnant state and national economy to support the Commission's inference that economic conditions would not support an increase in the market rate for regulatory services.

[3] *See* Res. ALJ-281 at 3-5.

November 2012 Workshop; Post-Workshop Report

On November 27, 2012, the Commission held a public workshop, as directed in Res. ALJ-281. Computation of hourly rates for purposes of the fee component of intervenor awards was discussed (among other issues). Among the suggestions offered was that the determination of a 2013 COLA be handled through a consensus process, without prejudice to any methodological adjustment that the Commission might ultimately adopt for market rate studies and hourly rate updates under Pub. Util. Code § 1806.

Assistant Chief ALJ Steven Kotz asked that workshop participants and other interested persons consult among themselves to see whether a joint recommendation on a 2013 COLA could be developed. Bob Finkelstein of The Utility Reform Network (TURN) and Rebecca Meiers-De Pastino of Southern California Edison Company (SCE) agreed to coordinate with intervenors and utilities, respectively, and to report the results. On behalf of TURN and SCE, Finkelstein reported the joint recommendation by e-mail to ACALJ Kotz on January 15, 2013. The e-mail says in relevant part:

> The parties are pleased to report that there is a joint recommendation of a 2% increase as the hourly rate adjustment for 2013. There were a number of reasons cited for support for this recommendation. For some parties, the 2% increase is reasonable in light of adjustments calculated using free historical Employment Cost Index ("ECI") data from the Bureau of Labor Statistics ("BLS"), subscription-based 2013 forecasts of the ECI, the December 2012 National Association of Business Economists Outlook Survey, and the Consumer Price Index, also published by the BLS. Other parties cited a strong desire to know the level of the 2013 hourly rate adjustment as early in the 2013 calendar year as practicable. Another reason cited was the desire to minimize the time and resources devoted to addressing the 2013 hourly rate adjustment in order to increase the likelihood of the Commission and the parties turning their attention sooner rather than later to the "longer-term" task of reviewing the methodology for market rate studies and hourly rate updates (as described in ALJ Kotz's e-mail). Other parties had additional reasons for either agreeing to 2% as a reasonable outcome under the circumstances, or not objecting to the 2% proposal.

We are pleased that the parties were able to make a joint recommendation. We also find the joint recommendation (a 2% COLA for 2013) is well supported, and we will adopt it. The parties used a wide range of forecasts and indices, including those we regularly rely on for ratemaking purposes. We also give due weight to the fact that the joint recommendation brings together parties of diverse interests. Where, as here, all the affected interests are at the table and in agreement, the resulting joint recommendation is likely to be reasonable.

In adopting a 2% COLA for 2013, we acknowledge that a higher or lower outcome may be supportable. Ascertaining the "market rate" for regulatory services is not an exact science. We are satisfied that for purposes of the intervenor compensation statute, adoption of the joint recommendation results in reasonable hourly rate ranges applicable to work performed in 2013.[4]

The Commission also has various policies and procedures that affect hourly rates in particular circumstances. (*See* Decision (D.) 07-01-009 and D.08-04-010.) These policies and procedures address, among other things:

- justifying rates higher 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.
- requesting increases greater than those generally adopted.
- receiving step increases for 2008 and beyond.

We continue these previously adopted policies and procedures.

[4] We also confirm that our adoption of the joint recommendation does not constitute approval of any particular methodology, index, or database. Later in today's resolution, we will discuss longer-term adjustments to the ways we set hourly rates. (*See* "Next Steps" below.)

Next Steps: Hourly Rate Adjustments for 2014 and Beyond

In essence, the statute requires the Commission to base the fee component of intervenor awards on the fees that regulatory professionals actually charge, i.e., the "comparable market rate." (*See* Pub. Util. Code § 1806.) Implementing this requirement has been difficult. As several participants noted at the November 2012 workshop, there is no "market" in the ordinary sense of the word for regulatory services. In particular,

- Regulatory services are not a commodity.
  The services themselves are varied and draw on a wide variety of legal and non-legal expertise.

- Regulatory services at the Commission are provided mostly by salaried employees of the utilities and the State.
  Translating a salary and associated benefits into an hourly rate is possible, but the participation of intervenors at the Commission seems more comparable to outside contractors used for particular tasks or proceedings under a variety of fee arrangements.

- Prior experience with hourly rate surveys has shown that a survey restricted to regulated utilities and Commission staff has clear limitations.
  Despite the size of the utility industry, utility representatives generally have long experience before they appear at the Commission. Thus, the rate ranges at the lower end of years of practice are based on few data points. Similarly, we have little compensation data for many kinds of non-legal specialties; accordingly, to date we have distinguished only between "attorneys" and non-attorney "experts."

- Assuming that Section 1806 requires the Commission to construct and analyze a hypothetical market, the parameters of that market must be defined.
  Lawyers, engineers, economists, accountants, and so on, are employed in many sectors of the California and national economy, not only the utility industry. May, or to what extent should, the Commission use compensation data drawn from professional work performed before other regulatory agencies or the courts? In non-utility industries? In locations outside California?

These difficulties largely explain why the Commission has relied mostly on annual COLAs to adjust its hourly rate tables ever since they were first created from surveys conducted in 2003-2005. There has been no clear way to address the limitations of those surveys, which collected information chiefly from the California utilities that paid the bulk of the intervenor awards.

The Commission has discussed one alternative to surveys, namely, contracting with a consulting firm specializing in professional recruitment to perform a compensation study. (*See* D.05-11-031 at 4-5.) The proposed alternative has never been implemented due to concerns about (1) how such a contract would be funded and administered, and (2) what process should be followed in developing and vetting the contractors' report.

Nevertheless, the Commission has acknowledged repeatedly that merely updating the hourly rates based entirely on targeted or general measures of inflation risks serious deviation from compensation actually paid to regulatory professionals. The hourly rate tables should be "benchmarked" periodically to actual compensation data.

We therefore direct our Chief Judge to continue the informal process that has already yielded the joint recommendation we adopt today. We do not foreclose any approach to benchmarking, including those mentioned above. However, we urge stakeholders to consider whether, consistent with Section 1806, we can broaden the range of reported compensation data relevant to this "market."

Conceivably, the data could be historical. For example, for the two most recent calendar years for which reports are available, the benchmark study could compare the compensation reported in the selected databases to the adopted hourly rate tables in those two years. No prior awards would be adjusted up or down, but an appropriate prospective adjustment could be made to the hourly rate tables for the year following the benchmark study.

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 2013, a 2% COLA adjustment is reasonable.

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 2013.

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 benchmark 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 Judge will convene a public workshop in the near future to discuss the updating process for hourly rate ranges, benchmark studies, and COLAs for 2014 and future years, and to address other matters currently affecting the intervenor compensation program as described in the notice for the November 27, 2012 workshop.

9. It is reasonable for intervenor work performed in 2014, 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 2013, intervenors are authorized a 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 2013 to reflect the 2% COLA.

2. The 5% step increase authorized in Decision (D.) 07-11-009 shall continue in 2013 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 updating process for hourly rate ranges, benchmark studies, and Cost-of-Living Adjustment for 2014 and future years. The workshop may also address other matters currently affecting the intervenor compensation program, as described in Finding 8.

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 _____, the following Commissioners voting favorably thereon:

_____

PAUL CLANON
Executive Director

ATTACHMENT

COLAs for 2013 and Resulting Hourly Rates

The table below shows the most recently adopted ranges for hourly rates for work performed by intervenor representatives. The rates for 2008 were adopted in Decision 08-04-010 and were unchanged during 2009-2011. The rates for 2012 were adopted in Res. ALJ-281. The rates for 2013 are adopted in today's resolution.

Table 1
Hourly Intervenor Rate Ranges for 2008 - 2013

Years of Experience	2008 Range	2009 Range	2010 Range	2011 Range	2012 Range	2013 Range
Attorneys						
0 - 2	$150-$205	$150-$205	$150-$205	$150-$205	$155-$210	$160-$215
3 - 4	$200-$235	$200-$235	$200-$235	$200-$235	$205--$240	$210-$245
5 - 7	$280-$300	$280-$300	$280-$300	$280-$300	$285-$305	$290-$310
8 - 12	$300-$355	$300-$355	$300-$355	$300-$355	$305-$360	$310-$365
13+	$300-$535	$300-$535	$300-$535	$300-$535	$305-$545	$310-$555
Experts						
0 - 6	$125-$185	$125-$185	$125-$185	$125-$185	$130-$190	$135-$195
7 - 12	$155-$270	$155-$270	$155-$270	$155-$270	$160-$275	$165-$280
13+	$155-$390	$155-$390	$155-$390	$155-$390	$160-$400	$165-$410

(END OF ATTACHMENT)