

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-303
Administrative Law Judge Division
_____, 2014**RESOLUTION**

RESOLUTION ALJ-303 Adopting intervenor rates for 2014 and related matters.

SUMMARY

This resolution adopts a 2.58 percent cost-of-living adjustment (COLA) for work performed in the 2014 calendar year. The approved hourly rate ranges for work performed in 2014 are shown in Table 1. With rounding, the COLA results in an increase of \$5-10 per hour for most intervenor representatives. The Commission intends to adopt a COLA for the 2015 calendar year during the first quarter of 2015 that is based on the economic changes during the final quarter of 2014.

As is currently the practice, the Commission will automatically apply the COLA to pending intervenor compensation requests claiming hours for work performed in 2014. This will ensure the fair application of the COLA to all those who make substantial contributions to Commission proceedings during 2014.

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

¹ See Resolution (Res.) ALJ-184. The utility data included compensation paid both to in-house and outside attorneys, experts, and advocates. The Commission also considered compensation paid by the State but decided to rely primarily on the utility data in light of the direction in Pub. Util. Code § 1806 that compensation awarded not exceed “the comparable

rate ranges approximately annually. Each update adjusted the ranges by means of a cost-of-living adjustment (COLA), adopted after public review and comment.²

Res. ALJ-281 recognized the challenges of performing a comprehensive “market rate study” for regulatory services and focused on improving the process for annual adjustments to the existing hourly rate ranges. Res. ALJ-281 directed the Chief Administrative Law Judge (CALJ) to convene a public workshop to discuss the adjustment process and, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for intervenor work performed in 2013, using factors relied on previously for this purpose or on such additional or alternative factors recommended in the public workshop.

Res. ALJ-287 approved a two percent COLA for intervenor awards of compensation for work performed in calendar year 2013. This adjustment was developed through a consensus process undertaken by the 2012 workshop participants.

The Commission found this adjustment to be reasonable because it was well supported and consistent with the forecasts and indices the Commission regularly relies on for ratemaking purposes, and was recommended by parties representing diverse interests. Among the reasons cited for parties’ consensus was their desire to minimize the time and resources devoted to addressing the 2013 hourly rate adjustment in hopes of the Commission and the parties more quickly turning their attention to the task of reviewing the methodology for market rate studies and hourly rate updates.

Res. ALJ-287 directed the CALJ to continue the informal process that was used to develop the COLA for 2013.

On December 2, 2013, the Commission held a public workshop to continue the effort of developing a consistent review process for intervenor hourly rates.³ The workshop also discussed the findings of the State Auditor’s report on the intervenor compensation

market rate for services paid by the commission or the public utility, which is greater, to persons of comparable training and experience who are offering similar services.”

² The Commission declined to approve a COLA for the years 2009, 2010, and 2011. See Res. ALJ-235, Res. ALJ-247, and Res. ALJ-267. However, COLAs were approved for 2012 (See Res. ALJ-281) and 2013 (See Res. ALJ-287).

³ Participants present at the workshop were the Association of California Community and Energy Services, AT&T, Center for Accessible Technology, California Energy Markets, Clean Coalition, Coast Economic Consulting, Green Power Institute, Greenlining Institute, Pacific Gas and Electric Company, San Jose Water Company, Sierra Club, Southern California Edison Company, and The Utility Reform Network. Participants attending the workshop via telephone were Aglet Consumer Alliance, San Diego Gas & Electric Company, Michael Shames, Natural Resources Defense Council, Union of Concerned Scientists and Verizon California.

program, among other topics. Following is a summary of proposals developed at the workshop.

Process for Updating the Program Guidelines

The workshop participants discussed ways to improve intervenor's understanding of the requirements of the claims process and recommended (1) publishing on the Commission web site a frequently asked questions (FAQ) document; (2) developing a process for intervenors to recommend improvements to the Intervenor Compensation Program Guide and Instructions (Guidelines); and (3) establishing regularly scheduled training classes for new intervenors and for those wanting a refresher course.⁴

Process for Periodic Review of Hourly Rates

The workshop reviewed the State Auditor's recommendation for the Commission to conduct a comprehensive market rate study and periodically update it to ensure proper compensation. The Commission has periodically reviewed and made cost-of-living adjustments to the rate ranges. Workshop participants recommended that a predictable timeline and factors to evaluate annual adjustments be adopted. However, several participants made clear that the range review procedures discussed at the workshop did not eliminate the need for a full market rate study.⁵

Workshop participants discussed several options for adjusting hourly rate ranges, and recommended using publicly-available Social Security Administration (SSA) COLA data, Bureau of Labor Statistics (BLS) data for consumer prices and wages, or court-approved rates (set by a court for litigation work) with the assistance from firms that compile court-awarded fee data. However, due to time constraints, participants were not able to develop a comprehensive proposal for the periodic review of hourly rates.

Updating the Rate Ranges for More Experienced Intervenors

Workshop participants recommended additional rate ranges for senior level intervenor attorneys with more than 13 years of experience or, alternatively, adding additional step increases for such attorneys. Because rate ranges were set in Rulemaking (R.) 06-08-019,

⁴ Workshop participants recommended that the training be conducted by an ALJ and include topics such as completing a notice of intent to claim compensation, avoiding duplication of efforts, maintaining good records, and completing the intervenor compensation claim.

⁵ See March 27, 2014 Joint Intervenors Response to Workshop Proposal at 2. "Joint Intervenors" include Community Environmental Council, Natural Resources Defense Council, Green Power Institute, the Greenlining Institute, Center for Accessible Technology, and The Utility Reform Network.

participants recommended that a new rulemaking be opened to consider this and other issues.

DISCUSSION

As a result of the December 2013 workshop and other ongoing efforts, the Commission has implemented several changes intended to make the intervenor compensation program more transparent and responsive to intervenors' needs, including (1) redesigning the program website; (2) updating the Guidelines; (3) publishing on the program website a list of pending intervenor compensation claims; (4) publishing in Excel format on the program website the intervenor hourly rate chart/history; and (5) updating program contact information and forms. Draft FAQs are being developed along with a procedure for accepting intervenor input on updates to the FAQs and Guidelines. Additionally, the Commission will continue working with intervenors to develop useful training. These and related matters will be addressed in future resolutions.

We agree that the proposal to add rate ranges for senior level intervenor attorneys with more than 13 years of experience should be further considered in a rulemaking proceeding.⁶ The Commission is currently focusing its limited resources on reducing the pending compensation claims and achieving compliance with the requirement of Pub. Util. Code § 1804(e) to resolve claims within 75 days after the filing of a request for compensation. However, the Commission will consider opening a rulemaking proceeding at its earliest opportunity to consider this and other intervenor compensation issues.

As noted above, it has been almost ten years since the Commission established hourly rate ranges based on compensation data provided by the major utilities, and the Commission has updated these hourly rate ranges approximately annually. Res. ALJ-287 articulated the particular challenges to developing a fee component of intervenor awards on the fees that regulatory professionals actually charge, *i.e.*, the "comparable market rate" but reiterated the Commission's concern that serious deviation from compensation actually paid to regulatory professionals could result from merely updating hourly rates based entirely on targeted or general measures of inflation.

Res. ALJ-287 stated that the hourly rate tables should be "benchmarked" periodically to actual compensation data but left open various approaches to benchmarking that were consistent with Section 1806. However, workshop participants were not able to develop a benchmarking proposal for the periodic review of hourly rates that would eliminate

⁶ Additional rate ranges for senior level intervenor attorneys should also be considered in any compensation study that may be undertaken to update market rates.

the need for a more in-depth market study. Workshop participants continue to recommend a thorough market study but agreed to continued COLA adjustments during the immediate future.

The Commission agrees with workshop comments that a review of the rate ranges for intervenors is not a substitute for a comprehensive market rate study. The Commission previously considered proposals to use a professional recruitment consultant to perform a compensation study.⁷ However, a comprehensive market study has not been undertaken, primarily due to lack of funding. The Commission currently does not have the funding necessary to complete a thorough study. While the Commission agrees that an analysis of court-approved rates might be useful in determining market rates, such an analysis also requires funding. Therefore, the Commission will continue using publicly-available data to adjust hourly rate ranges until funds become available to undertake a thorough market study.

As discussed in Res. ALJ-281 and Res. ALJ-287, there is no single methodology or source of information on which the Commission has relied on for approving a COLA. To adjust hourly rate ranges, the Commission has made informed judgments after reviewing various federal inflation indices and the Commission's own inflation forecasts as reflected in current general rate case decisions.⁸ Workshop participants recommend against using less predictable factors that were cited in Res. ALJ-247 as part of the basis for adopting a COLA of zero for 2010 rates.⁹ Instead, workshop participants recommend that the Commission use publicly-available SSA COLA data and BLS data for consumer prices and wages to adjust hourly rate ranges.

Workshop participants recommended that the Commission publish adjustments to hourly rate ranges in October of the prior year to help intervenors plan and budget. Workshop participants also agreed that the Commission could move to a biennial review process on a trial basis, if the Commission used an established objective basis for annual increases such as the COLAs adopted in recent years. We prefer that adjustments to hourly rate ranges be based on actual data rather than estimated data and implemented in a consistent manner. Therefore, we will strive to issue an annual adjustment during the first quarter of the year using the prior year data that becomes

⁷ Decision (D.) 05-11-031 in R.04-10-010 describes Verizon California's proposal to retain a company with expertise in personnel recruitment and compensation to develop and analyze market rate information. Verizon submitted proposals from two human resources consulting firms describing the scope of work, timing, project team, and cost for such a project.

⁸ See Res. ALJ-281 at 1-3.

⁹ The less predictable factors include the unemployment rate, the housing market prices, and the transition from being an import-oriented/low savings rate economy to a greater export and higher savings rate economy.

available in January of each year. In particular, we intend to issue a resolution during the first quarter of 2015 adopting a COLA to update hourly rate ranges for 2015, and thereafter to update hourly rate ranges during the first quarter of each year.

Cost-of-Living Adjustment

The Commission has previously looked to the Consumer Price Index (CPI-U), the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), the Employment Cost Index (ECI), unemployment rates in California, home prices and sales, the UCLA Anderson Forecast, and reports from the California Legislative Analyst Office for guidance in establishing the cost-of-living adjustment for intervenors. The CPI-U is a measure of inflation published by the BLS. The Commission last issued a COLA on April 29, 2013, when the CPI-U index was at 231.7. Since that time, the index has risen to 237.4, as listed for September 1, 2014, an increase of 2.4 percent since the last adjustment.

In October 2014, the SSA announced a 1.7 percent cost-of-living adjustment to be made to social security benefit payments. This COLA is based on the CPI-W, one of the indices factored into the CPI-U discussed above. Specifically, the social security adjustment is based on the CPI-W “from the third quarter of the last year a COLA was determined to the third quarter of the current year.”¹⁰ CPI-Ws are calculated on a monthly basis by the BLS, and 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. Since the Commission’s last COLA, the CPI-W has increased from 228.9 to 234.0, an increase of approximately 2.18 percent.

The Commission also looks to the ECI, published by the BLS, for guidance on the setting of a COLA. The ECI tracks changes in the costs of labor on a quarterly basis, with updates published at the end of January, April, July, and October of each year. The corresponding percentage change in the ECI, for wages and salaries, for the period from March 2013, to September 2014, for civilian workers is 3.074 percent, for compensation of private industry workers is 3.325 percent, and for state and local government workers is 2.234 percent.¹¹

The CPI-U, CPI-W and the various ECIs each have merits for determining wage and salary adjustments, and each is included in the calculation of the COLA in order to reflect the diversity of intervenors that come before the Commission. To balance these

¹⁰ See “*What is a cost-living adjust COLA?*” at: www.ssa.gov/news/cola.

¹¹ ECIs for the third quarter 2014 were published on October 31, 2014. See <http://www.bls.gov/web/eci/ecicois.pdf>.

differences and to provide consistent and potentially more predictable COLAs in the future, the average percent change (increase/decrease) in the CPI-W and CPI-U, should be averaged with the average change in the ECIs for all workers, as shown in the following formula:

$$\frac{\frac{\Delta\text{CPI-U} + \Delta\text{CPI-W}}{2} + \frac{\Delta\text{ECI (Civilian)} + \Delta\text{ECI (Private Sector)} + \Delta\text{ECI (Government)}}{3}}{2} = \text{COLA}$$

Applying the indices reflecting changes since the COLA adopted by Res. ALJ-287 produces a COLA as follows:

$$\frac{\frac{2.18\% + 2.4\%}{2} + \frac{3.074\% + 3.325\% + 2.234\%}{3}}{2} = 2.58\%$$

Hourly Rates

Table 1 shows the most recently adopted ranges for hourly rates for work performed by intervenor representatives. The rates for 2014 are adopted in today's resolution.¹² The adopted hourly rate ranges are rounded to the nearest five-dollar increment.

¹² The rates for 2009 were adopted in Res. ALJ-235; for 2010 in Res. ALJ-247; for 2011 in Res. ALJ-267; for 2012 in Res. ALJ-281; and for 2013 in Res. ALJ-287.

Table 1						
Hourly Rates Ranges for 2009-2014						
Years of Experience	2009	2010	2011	2012	2013	2014
Attorneys						
0-2	\$150-\$205	\$150-\$205	\$150-\$205	\$155-\$210	\$160-\$215	\$165-\$220
3-4	\$200-\$235	\$200-\$235	\$200-\$235	\$205-\$240	\$210-\$245	\$215-\$250
5-7	\$280-\$300	\$280-\$300	\$280-\$300	\$285-\$305	\$290-\$310	\$300-\$320
8-12	\$300-\$355	\$300-\$355	\$300-\$355	\$305-\$360	\$310-\$365	\$320-\$375
13+	\$300-\$535	\$300-\$535	\$300-\$535	\$305-\$545	\$310-\$555	\$320-\$570
Experts						
0-6	\$125-\$185	\$125-\$185	\$125-\$185	\$130-\$190	\$135-\$195	\$140-\$200
7-12	\$155-\$270	\$155-\$270	\$155-\$270	\$160-\$275	\$165-\$280	\$170-\$285
13+	\$155-\$390	\$155-\$390	\$155-\$390	\$160-\$400	\$165-\$410	\$170-\$420

The Commission has various policies and procedures that affect hourly rates in particular circumstances.¹³ 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.

¹³ See Decision (D.) 07-01-009 and D.08-04-010.

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 on October 31, 2014, for public review and comment. No comments were served. The resolution is adopted as originally proposed with minor clarifications.

FINDINGS

1. For work performed in 2014, a 2.58 percent COLA adjustment is reasonable.
2. It is reasonable to allow individuals an annual "step increase" of five percent, twice within each experience level and capped at the maximum rate for that level, as authorized by 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 the 2014 calendar year.
4. It is reasonable 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 market rate study should be conducted when funding allows for such a review.
8. 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 the 2014 calendar year, intervenors are authorized a 2.58 percent cost-of-living adjustment.

2. The five percent step increase authorized in Decision 07-11-009 shall continue in 2014. The step increase shall be administered as specified in D.08-04-010.

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

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ-303 to the electronic mail addresses on the attached service lists. I have served a Notice of Availability of the foregoing Draft Resolution ALJ-303 by U.S. mail on those persons on the attached service lists that do not have e-mail address.

Dated October 31, 2014, at San Francisco, California.

/s/ ELIZABETH KISS

Elizabeth Kiss

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