
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 18, 2011

Agenda ID #10161

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-267

This draft resolution regarding intervenor rates for 2011 and addressing related matters will be on the agenda at the March 24, 2011 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

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 March 14, 2011, and reply comments shall be served no later than March 21, 2011. 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 Asst. Chief Administrative Law Judge Cooke at mlc@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:tcg

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-267
Administrative Law Judge Division
March 24, 2011

R E S O L U T I O N

RESOLUTION ALJ-267. Adopting Intervenor Rates for 2011 and Addressing Related Matters.

Summary

In today's resolution, we do not adopt a Cost-of-Living Adjustment (COLA) for work performed by intervenors in calendar year 2011 and address other related matters.

Background

Decision (D.) 08-04-010, issued on April 10, 2008, directs the Chief Administrative Law Judge (ALJ), in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for work performed in 2009, and in subsequent years in the absence of a market analysis study, that considers the same federal inflation indexes used to compute the 2008 COLA, to be effective on January 1 of each year. If feasible, this proposed resolution should be prepared in time for consideration by the Commission on or before its last business meeting of the year prior to the effective date of the COLA.

Discussion

Prior decisions reviewed various federal inflation indexes, 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 (2002-2011) SSA COLAs and other price and wage indexes.¹

¹ There were no increases in Social Security benefits payable in January 2011, nor were there any increases in SSI payments. <http://www.ssa.gov/OACT/COLA>.

Historically, our past decisions have been weighed heavily on SSA COLA and similar data. In ALJ-235 and ALJ-247 we based our judgment on a review of indices measuring inflation in consumer prices, wages, and the state and national economy. Since there is no current index which 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 SSA calculates the December 2010 COLA by measuring the increase in the average Consumer Price Index (CPI-W) from the third calendar quarter of 2008 to the third quarter of 2010. These figures are derived from the monthly CPI-Ws developed by the BLS:

Month	CPI-W for:	
	2008	2010
July	216.304	213.898
August	215.247	214.205
September	214.935	214.306
Total	646.486	642.409
Average (rounded to the nearest 0.001)	215.495	214.136

The percentage increase in the CPI-W from the third quarter of 2008 through the third quarter of 2010 is -.63 %. The calculation of this percentage increase is:

$$(214.136 - 215.495 / 215.495 \times 100 = -.63\% \text{ (rounded to the nearest one-tenth of 1\%)})$$

We evaluate many factors when considering whether or not COLA increases are warranted for intervenor work in 2011. In addition to SSA COLAs, considerable weight is given to recent economic trends. The most notable continues to be the high rate of unemployment. In December 2010, the national unemployment rate was 9.4%, down 0.4% from November, and down 0.5% from one year ago.² The December 2010 seasonally adjusted unemployment rate in California was 12.5%, up 0.1% from the rate in November, and up 0.2% from one year ago.³

The lowest unemployment rate among California counties in December was 7.9% in Marin. Other counties with rates below 10.0% in December were: San Mateo, Orange,

² The number of unemployed persons in the United States, increased by 3,000 in December 2010, now equal to 2,269,000 persons.

³ California Employment Development Department's Labor Market Review, dated December 2010. <http://www.larbormakrteinfo.edd.ca.gov>.

Mono, San Francisco, Santa Barbara, Inyo and San Luis Obispo. In all, 19 counties had rates below 12%. The highest unemployment rate in December was 28.3% in Imperial County. In total, 14 counties had rates above 17.0%.⁴

Job losers comprised the largest group of unemployed persons and represent 65.1% of all unemployed. By duration, the largest group of unemployed was those who had been unemployed 27 weeks and over (1,025,000 persons or 46.1% of all unemployed). In addition, the number of persons unemployed 27 weeks or more increased by 299,000 persons, equal to 41.2% since December 2009.

Within nonfarm industries, seven sectors saw month-over job gains and four sectors saw month-over declines. The sectors with increased employment in December were leisure and hospitality (9,300); professional and business services (7,000); financial activities (6,200); manufacturing (4,400); education and health services (3,700); information (3,000); and other services (100). Sectors that lost jobs in December in order of job loss magnitude were: government (15,400); trade, transportation and utilities (9,200); construction (3,200); and mining and logging (1,000).⁵

In October 2010 at its annual exposition,⁶ The California Association of Realtors (C.A.R.) issued a gloomy forecast for California Real Estate in 2011.⁷ California home sales for 2010 are forecast to decline 10% from the 2009 sales figure of 546,500 homes sold. Sales in 2011 are projected to increase by 2% to 502,000 units, compared with 492,000 units (projected) in 2010. After two consecutive years of record-setting price declines, the median home prices in California will climb 11.5% in 2010 to \$306,500 and increase another 2% in 2011 to \$312,000 according to CAR's forecast.

CAR's President states that "the situation in the California housing market continues to be a tale of two housing markets." The segment of the market under \$500,000 has been driven by distressed sales, while higher-priced areas of the state have been constrained by restricted financing options, and increasingly have experienced an increase in the number of distressed properties. According to Goddard, "sales in the low end have been constrained by a lack of inventory, putting pressure on prices. Multiple offers on lower-end homes have been very common."

CAR's Vice President and Chief Economist Leslie Appleton-Young, states that "a lean supply of available homes for sale will drive prices up at the low end, nut larger

⁴ *Ibid* at 8.

⁵ California Market Review, December 2010 at 8.

⁶ <http://www.upi.com/Real-Estate/2010>.

⁷ <http://www.upi.com/Real-Estate/2010>.

inventories and limited, less attractive financing will cause continued softness at the high end. There's some indication that lenders will accelerate the number of foreclosures coming on the market, further adding to the housing supply, but we do not anticipate that lenders will flood the market with distressed properties."

According to Appleton-Young, the "wild cards for 2011 include federal housing policies, actions of underwater homeowners and the strength of the economic recovery. What is certain is that favorable home prices and historically low interest rates will continue to make owning a home in California attractive for those who are in a position to buy."

Resolution ALJ-247 did not adopt a COLA for work performed by intervenors in calendar year 2010 because the CPI-W from the third quarter of 2008 through the third quarter of 2009 was -2.1% and the prevailing economic trends at that time indicated a declining economy. Instead of reducing hourly rates, we applied the same hourly rates and did not adopt COLAs for 2010 intervenor work.

Similar conditions remain in this review: a negative CPI-W (-.63), a sluggish economy and high rates of unemployment. For the third year in a row, we continue our position of disallowing COLAs for intervenor work in 2011, but keep a sharp-eye on future declines in the CPI-W. Should declines continue, reductions in hourly rates may be warranted.

COLA Adjustments for 2011 and Resulting Rates

After reviewing the available data and based on the discussion above, we do not adopt any COLA adjustment for 2011. The table below shows the adopted ranges for rates for work performed by intervenor representatives. The rates for 2006 and 2007 were adopted in D.07-01-009. The rates for 2008 were adopted in D.08-04-010 and remain the same for 2009-2011.

Hourly Intervenor Rate Ranges for 2006 – 2011
(2011 rates = 2010 rates)

Years of Experience	2006 Range	2007 Range	2008 Range	2009 Range	2010 Range	2011 Range
Attorneys:						
0 - 2	\$140-\$195	\$145-\$200	\$150-\$205	\$150-\$205	\$150-\$205	\$150-\$205
3 - 4	\$190-\$225	\$195-\$230	\$200-\$235	\$200-\$235	\$200-\$235	\$200-\$235
5 - 7	\$260-\$280	\$270-\$290	\$280-\$300	\$280-\$300	\$280-\$300	\$280-\$300
8 - 2	\$280-\$335	\$290-\$345	\$300-\$355	\$300-\$355	\$300-\$355	\$300-\$355
13+	\$280-\$505	\$290-\$520	\$300-\$535	\$300-\$535	\$300-\$535	\$300-\$535
Experts:						
All	\$115 - \$370					
0 - 6		\$120-\$180	\$125-\$185	\$125-\$185	\$125-\$185	\$125-\$185
7 - 12		\$150-\$260	\$155-\$270	\$155-\$270	\$155-\$270	\$155-\$270
13+		\$150-\$380	\$155-\$390	\$155-\$390	\$155-\$390	\$155-\$390

D.07-01-009 and D.08-04-010 outlined procedures for:

- justifying the increase of rates beyond those generally adopted.
- establishing rates for new representatives, establishing the setting of rates for representatives who have not had an authorized rate at least four years prior to a pending request for compensation.
- requesting hourly increases which are greater than those generally adopted.
- clarification of step increases for 2008 and beyond.
- establishing the policy that the rates intervenors request for the use of outside consultants (attorneys and experts) may not exceed the actual rates billed to the intervenors by the consultants, even if the consultants' rates are below the floor for any given experience level.

We continue these previously adopted policies.

COLAs for 2012 and Beyond

We direct the Chief Administrative Law Judge, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for work performed in 2012, and in subsequent years in the absence of a market analysis study, that considers the same factors used to compute the 2011 COLA, to be effective on January 1 of each year.

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.

Findings

1. For work performed in 2011, no COLA adjustment should be adopted given our review of various indices and economic indicators.
2. Allowing individuals an annual "step increase" of 5%, twice within each experience level and capped at the maximum of that level, as authorized in D.07-01-009, is reasonable.
3. Intervenor hourly rate ranges based on levels of experience have been adopted for the last six years (2005-2011).
4. It is reasonable generally to restrict intervenor rates to the established 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 rate adopted rate for any given level of experience, in a given year.
6. The rate levels established herein, and the limited procedure for considering rates above the established levels, are consistent with the intervenor compensation statutes (§§ 1801-1812).
7. A comprehensive study of market rates will be necessary in the future in order to ensure compliance with the "market rate standard" described in § 1806.
8. It is reasonable to authorize a COLA for work performed in 2012, by future Commission Resolution, and for subsequent years, in the absence of a market rate study, to be effective on January 1 of each year.

THEREFORE, IT IS ORDERED that:

1. For work performed in 2011, intervenors are not authorized an hourly rate Cost-of-Living Adjustment (COLA) and hourly rate ranges adopted for 2008, as set forth in this resolution, remain in effect.

2. The 5% step increases authorized in Decision (D.) 07-01-009 shall continue in 2011, and subsequent years. The step increases shall be administered as outlined in D.08-04-010.

3. In order to ensure compliance with the “market rate standard” described in Pub. Util. Code § 1806, the Chief Administrative Law Judge(CALJ) shall designate staff from the ALJ Division who will work in consultation with interested utilities and intervenors on a market rate study to be conducted and concluded within the next two to three years, if feasible, and consider the use of an outside consultant to conduct the study.

4. A COLA adjustment shall be authorized, by future Commission Resolution, for work performed in 2012, and subsequent years in the absence of a decision based on a market rate study, to be effective on January 1 of each year.

5. The CALJ, in consultation with the Commission President, shall prepare a proposed resolution recommending the 2012 COLA, and subsequent years if necessary, using the same factors used to compute the 2011 COLA, with the resolution prepared, if feasible, in time for consideration by the Commission on or before its last business meeting of the year prior to the effective date of the COLA.

6. 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

APPENDIX A

**Comparison of Inflation Indexes
(Percent Increase from previous year)
2002-2011**

Year	SSA COLA ¹	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	2.9	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	2.9	N/A	3%	5.9%	D.07-01-009
2008	2.3	N/A	N/A	3%	8.4%	D.08-04-010
2009	5.8	-3.4	N/A	0%	12.4%	Resolution ALJ-235
2010	0.0	-2.1	N/A	0%	12.5%	Resolution ALJ-247
2011	0.0	-0.63	N/A	0%		Resolution ALJ-267

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

² BLS - average Consumer Price Index. www.bls.gov.

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 Employment Development Department CA unemployment rates November 2002-2010. www.edd.ca.gov.

⁶ Commission order authorizing the intervenor rate increase.

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ-267 to the electronic mail addresses on the attached service lists, as well as a Notice of Availability by U.S. mail. I have served a hard copy of the foregoing Draft Resolution ALJ-267 by U.S. mail on those persons on the attached service lists that do not have e-mail addresses.

Dated February 18, 2011, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan

[Cooke Appendix B](#)