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

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

June 12, 2012 Agenda ID #11409

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-281

This draft resolution regarding intervenor rates for 2012 and addressing related matters will be on the agenda at the July 12, 2012 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 July 2, 2012, and reply comments shall be served no later than July 9, 2012. 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 Ebke at meb@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-281
Administrative Law Judge Division
July 12, 2012

# R E S O L U T I O N

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

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## SUMMARY

In today's resolution, we do not adopt a Cost-of-Living Adjustment for work performed by intervenors in calendar year 2012. The rates that were adopted in 2008 remain the same through 2012.

## 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 work performed in 2009, and 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 (2002-2012) SSA COLAs and other price and wage indices.[1]

Historically, our past decisions have been weighed heavily on SSA COLA and similar data. In Resolutions ALJ-235, ALJ-247, and ALJ-267, 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 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.

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.

The last year in which a COLA became effective was 2008. Therefore the law requires that we use the average CPI-W for the third quarter of 2008 as the base from which we measure the increase (if any) in the average CPI-W. The base average is 215.495, as shown in the table below.

Also shown in the table 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 through the third quarter of 2011, there is a COLA for December 2011.

| | **CPI-W[2] for:** | |
|---|---|---|
| **Month** | **2008** | **2011** |
| July | 216.304 | 222.686 |
| August | 215.247 | 223.326 |
| September | 214.935 | 223.688 |
| Total | 646.486 | 669.700 |

[1] Social Security and Supplemental Security Income (SSI) beneficiaries received a 3.6% COLA for 2012.

[2] These figures are derived from the monthly CPI-Ws developed by the Bureau of Labor Statistics.

| Average (rounded to the nearest 0.001) | 215.495 | 223.233 |
|---|---|---|

The percentage increase in the CPI-W from the third quarter of 2008 through the third quarter of 2011 is +3.6%. The percentage increase is calculated as follows:

(223.233 - 215.495) / 215.495 x 100 = +3.6%[3]

We evaluate many factors when considering whether COLA increases are warranted for intervenor work in 2012. In addition to SSA COLAs, considerable weight is given to recent economic trends. The most notable factor continues to be the high rate of unemployment. In March 2012, the national unemployment rate was 8.2%, down 0.1% from February, and down 0.7% from the previous year. In comparison, California's seasonally adjusted unemployment rate was 11.0% in March 2012, up 0.1% from the rate in February, and down 0.9% from one year ago.[4]

The lowest unemployment rate among California counties in March was 7.0% in Marin. Other counties with rates below 9.0% in March were: San Mateo (7.5%), Orange (8.1%), San Francisco (8.1%), San Luis Obispo (8.8%), and Santa Barbara (8.9%). The highest unemployment rate in March was 26.2% in Imperial County. Forty-eight of California's 58 counties recorded an unemployment rate increase between February and March 2012.

Job losers comprised the largest group of unemployed persons representing 58.9% of all unemployed. By duration, the largest group of unemployed was those who had been unemployed 52 weeks or more (726,000 persons or 34.6% of all unemployed). Within California's nonfarm payrolls, eight sectors showed growth over the past year: information (3.8 %); professional and business services (3.1%); mining and logging (2.8%); educational and health services (2.8%); leisure and hospitality (2.1%); construction (1.9%); trade, transportation, and utilities (1.9%); and financial activities (0.9%). Within California's nonfarm payrolls showing decline were: manufacturing (0.1%); government (1.9%) and other services (1.5%).[5] Nationwide, nonfarm payrolls were up 1,899,000 or 1.5% over the year. In California, jobs were up 181,000 or 1.3% from the previous year.

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[3] Rounded to the nearest one-tenth of one percent.

[4] http://www.calmis.ca.gov/file/lfmonth/calmr.pdf at 2.

[5] *Ibid* at 5.

In January of 2012, the California Legislative Analyst Office (LAO) released its California Fiscal Outlook for the 2012-2013 Budget.[6] The report's forecast of California's General Fund revenues and expenditures estimates that the baseline budget problem for the state's General Fund would total $12.8 billion for 2012-2013 between now and the time the Legislature enacts a 2012-2013 state budget plan. The cornerstone of the Governor's proposed budget issued on January 5, 2012[7] is based on the assumption that voters will approve the Governor's proposed tax initiative in November 2012. The Governor's budget plan also contains trigger cuts that would take effect if voters reject the Governor's tax proposal.[8] Consistent with the state's policies in recent years, the LAO assumes no annual COLAs or price increases over the forecast period, other than those instances where the state is required to maintain specific benefits in its health programs that include inflationary increases. If, by contrast, its forecast included COLAs and price increases for all programs, the General Fund costs would be higher by around $3 billion by 2016–2017. The executive summary of the LAO[9] concludes: [o]ne year ago, we wrote that the United States (U.S.) economic recovery was progressing more slowly than previously expected. Once again, we have to make the same observation. While the economy has some bright spots, including export growth and strength in technology-related service sectors (which are important to California), weakness in the housing market continues to affect both the construction industry and the financial services sector. The end of the federal fiscal stimulus program and declining governmental employment also are limiting economic growth.

The Governor's Budget Summary for 2012-2013[10] predicts that "California, like the nation is in the midst of an uneven economic recovery. Some sectors of the economy, including high technology and export markets, are doing well. Despite these areas of strength, economic conditions are still hamstrung by weak real estate markets, consumer confidence lingers at recessionary levels, and volatility in equity markets remains high. Global and national events have created economic uncertainty and continue to impact recovery. Most recently, congressional gridlock on budgetary issues, including the debt ceiling, has added to economic uncertainty and stock market volatility. Further, the European debt, banking and budgetary crisis has adversely affected the California and national economies."

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[6] http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=2552 at 5.

[7] On May 14, 2012, the Governors California 2012-2013 budget was revised. http://gov.ca.gov/news.php?id=17543.

[8] The cuts would reduce social services and child care programs substantially, and implement trigger cuts, primarily affecting schools, if the voters do not approve the tax measure.

[9] http://www.lao.ca.gov/reports/2011/bud/fiscal_outlook/fiscal_outlook_2011.aspx

[10] http://www.ebudget.ca.gov/pdf/BudgetSummary/FullBudgetSummary.pdf

The California Association of Realtors (CAR) issued its forecast for California Real Estate in 2012.[11] The forecast predicts that "California home sales and median price are predicted to improve only slightly in 2012, as the continuation of the tepid economic recovery, uncertainty about the future, and funding challenges for residential mortgages are expected to keep the market moving sideways, with little foreseeable momentum in either direction." The forecast for California home sales next year is for a slight 1% increase in median home prices. CAR predicts that the "California median home price will increase 1.7% in 2012 to $296,000.[12]

According to CAR's Vice President and Chief Economist Leslie Appleton-Young, "2012 will be another transition year for the California housing market, as the continued uncertainty about the U.S. financial system, job growth, and the stability of the overall economy remains as important segments of the overall market as lenders continue to work through the foreclosure process."[13]

According to Appleton-Young, the "wild cards for 2012 are many, including federal, fiscal, monetary, and housing policies, the contentious political climate during an election year, and the strength of the U.S. economic recovery." Appleton-Young predicts that the "most likely scenario is for the modest recovery to continue, which should push sales up slightly by 1% next year and maintain levels that are significantly higher than those recorded during the depths of the housing downturn."[14] We find here, as we have before, that our discussion of housing sales and values are important because lower property tax estimates affect the funding of programs supported by California's General Fund.[15]

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[11] http://www.car.org/newsstand/newsreleases/2011newsreleases/2012forecast/

[12] http://www.car.org/newsstand/newsreleases/2011newsreleases/2012forecast/.

[13] *Ibid.*

[14] *Ibid.*

[15] http://www.ebudget.ca.gov/BudgetSummary/BSS/BSS.html.

Resolution ALJ-237,[16] did not adopt COLAs for 2009 intervenor work, electing instead to apply the same hourly rates which were adopted in D.08-04-010. Our decision was based on our informed judgment after a demonstrated pattern of inflation in consumer prices, high unemployment, and the state and national economy, which was in decline.[17]

Resolution ALJ-247,[18] did not adopt COLAs for 2010 intervenor work due to a -2.1 CPI-W during the standard review period and other economic trends: most notably, high unemployment rate in California (12.4%), high foreclosure rates, and slow or little no growth for California. Instead of recommending a reduction in hourly rates, we chose for the second year, to apply the same hourly rates adopted in D.08-04-010, and disallowed COLAs for 2010 intervenor work.

Resolution ALJ-267,[19] did not adopt COLAs for 2011 intervenor work, due again to a negative CPI-W, albeit it smaller than the previous year (−.63%), high unemployment rates, a depressed housing market and the fact that no inflation adjustments were assumed in the estimates used by the LAO when addressing California's General Fund revenues and expenditures and state budget deficits. Based on these factors, we continued the hourly rates adopted in D.08-04-010, disallowed COLAs, and cautioned intervenors that if the declining trend of the CPI-W continued, we may in fact have considered a reduction in the hourly rates adopted for intervenors.

Although this year marks the first increase in CPI-Ws in several years, this decision is strongly guided by the variety of other economic factors reviewed here. These factors do not support that cost-of-living increases are warranted. California is not on stable ground for a "healthy" recovery just yet. We will continue to keep a sharp-eye on the future of California's economy in the hope that California's economy grows stronger, allowing the Commission to conclude that COLAs are warranted. For 2012 intervenor work, we continue our position of disallowing COLAs and direct intervenors to continue to apply the hourly rates adopted in D.08-04-010.

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[16] Resolution ALJ-235 adopted intervenor compensation rates for 2009. http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/98721.pdf

[17] The Social Security Administration calculated the December 2008 COLA (+5.8%), deriving its figures from the monthly CPI-Ws from the third calendar year of 2007 to the third quarter of 2008. Our consideration included in part, a review of the October 2008-December 2008 period CPI-Ws, which equaled -3.4%.

[18] Resolution ALJ-247 adopted intervenor compensation rates for 2010. http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/132649.pdf

[19] Resolution ALJ-267 adopted intervenor compensation rates for 2011. http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/132649.pdf

## COLAs for 2012 and Resulting Rates

After reviewing the available data and based on the discussion above, we do not adopt any COLA for 2012. 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 2009-2012.

**Table 1**
**Hourly Intervenor Rate Ranges for 2007 – 2012**[20]
(2012 rates = 2011 rates)

| 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 | $150-$205 |
| 3 - 4 | $195-$230 | $200- $235 | $200-$235 | $200-$235 | $200-$235 | $200-$235 |
| 5 - 7 | $270-$290 | $280- $300 | $280-$300 | $280-$300 | $280-$300 | $280-$300 |
| 8 - 2 | $290-$345 | $300-$355 | $300-$355 | $300-$355 | $300-$355 | $300-$355 |
| 13+ | $290-$520 | $300-$535 | $300-$535 | $300-$535 | $300-$535 | $300-$535 |
| **Experts:** | | | | | | |
| All | $115 - $390 | | | | | |
| 0 - 6 | $120-$180 | $125-$185 | $125-$185 | $125-$185 | $125-$185 | $125-$185 |
| 7 - 12 | $150-$260 | $155-$270 | $155-$270 | $155-$270 | $155-$270 | $155-$270 |
| 13+ | $150-$380 | $155-$390 | $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.

[20] *See* D.08-04-010 for a list of 2006 rates.

We continue these previously adopted policies.

## COLAs for 2012 and Beyond

We direct the CALJ, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for work performed in 2013, and in subsequent years in the absence of a market analysis study, that considers the same factors used to compute the 2012 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 2012, 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 seven years (2005-2012).

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 consider the authorization of a COLA for work performed in 2013, 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 2012, intervenors are not authorized an hourly rate Cost-of-Living Adjustment and hourly rate ranges adopted for 2008, as set forth in Table 1 of this resolution, remain in effect.

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 outlined in D.08-04-010.

3. A Cost-of-Living Adjustment adjustment may be authorized, by future Commission Resolution, for work performed in 2013, 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 Chief Administrative Law Judge, in consultation with the Commission President, shall prepare a proposed resolution recommending the 2013 Cost-of-Living Adjustment (COLA), and subsequent years if necessary, using the same factors used to compute the 2012 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.

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)
### 2002-2012

| Year | SSA COLA [21] | CPI-W | BLS CPI[22] | BLS Wages[23] | Intervenor Rate[24] | CA Unemployment Rate[25] | Commission Order[26] |
|---|---|---|---|---|---|---|---|
| **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** | **0%** | | |

**(END OF APPENDIX A)**

Ebke Comment Resolution ALJ-281 Certificate of Service

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

[22] BLS –Consumer Price Index (average % change Dec-Dec). http://www.bls.gov/cpi/

[23] BLS average wage increase for legal profession in the Bay Area.

[24] 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.

[25] http://www.calmis.ca.gov/file/lfmonth/calmr.pdf

[26] Commission orders authorizing intervenor rates and other matters.