

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Set Hourly Rates for Purposes of Calculating Intervenor Compensation Awards Pursuant to Public Utilities Code Section 1801 and Following, for Work Performed in Calendar Year 2006.

FILED
PUBLIC UTILITIES
COMMISSION
AUGUST 24, 2006
SAN FRANCISCO OFFICE
RULEMAKING 06-08-019

ORDER INSTITUTING RULEMAKING

Today, we commence the process for updating the hourly rates used in computing awards of compensation to intervenors who make substantial contributions to Commission decisions. The guidelines and principles we plan to adopt will update, and modify where appropriate those adopted Rulemaking (R.) 04-10-010. (See Decision (D.) 05-11-031.) The new hourly rates will apply to work performed by intervenors' representatives in 2006.

Background

The intervenor compensation program is governed by statute. Among other things, the hourly rates used in our awards must reflect the "market" rates, as described in Pub. Util. Code § 1806:¹

The computation of compensation awarded pursuant to Section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the market rate for services paid by the

¹ All statutory citations are to the Public Utilities Code.

commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services.

Until R.04-10-010, we generally set hourly rates piecemeal, by which we mean that for each proceeding, each intervenor, and indeed each appearance by a particular representative of an intervenor, we might revisit the reasonableness of that representative's hourly rate. We used this rate-setting approach, in part, because of the inherent difficulty in trying to coordinate all compensation requests that might cover work done in a given time period. Gradually, however, the need for greater coordination became clear.

Chiefly, we encountered difficulty in ensuring that representatives with comparable training and experience, and performing similar work, received hourly rates falling within a reasonable range of each other. We also had not systematically gathered the data on compensation paid by the utilities and by the State to our own staff and other representatives. We determined that we could better implement § 1806 by establishing, through periodic rulemakings or other appropriate processes allowing for full and fair participation, the rates to be paid to all intervenors' representatives for work done in specified time periods. These rates would be based on the best information we could get on rates paid to utility and Commission representatives, including employees and representatives used in specific proceedings.

The first such rulemaking was R.04-10-010. We found, after examining the compensation we collected from the utilities and the Commission's own fiscal officers, that the current hourly rates for intervenor representatives, as of 2004, were in compliance with the market rate standard of § 1806. We further found that the hourly rates paid by the utilities and the Commission had stabilized, such that we should not authorize any general increase to intervenor

hourly rates for work performed in 2005. We recognized, however, that special circumstances, particular to an individual representative, might justify an increase for that representative. We stated these circumstances as follows:

1. Where a representative's last authorized rate was for work done before 2004, an increase is reasonable, but we will limit the increase to 3% per year, which is roughly the recent rate of inflation as reported by various government agencies.
2. Where additional experience since the last authorized rate would move a representative to a higher level of qualification (e.g., from intermediate to senior), an increase is reasonable to bring the representative's hourly rate within the range of the representative's peers at the higher level.
3. Where a representative's last authorized rate is below that of the range of rates shown in the tables above for representatives with comparable qualifications, an increase is reasonable to bring the representative's rate to at least the bottom level of the rate range. Here, we have in mind certain representatives who have historically sought rates at or below the low end of the range of rates for their peers. We emphasize, however, that for any given level of qualifications, there will always be a range of rates in the market, so this increase is intended to narrow but not necessarily eliminate perceived disparities.

D.05-11-031, *mimeo.*, pp. 17-18 (tables and footnotes omitted).

In general, we are satisfied that the guidelines and principles adopted in D.05-11-031 have served us well. At the same time, we need to revisit those guidelines and principles, and to update the hourly rates to consider the new

data submitted by the utilities on April 30, 2006, and subsequently by staff.² As directed by D.05-11-031, the Chief Administrative Law Judge (ALJ) convened two preliminary meetings, at which parties discussed the process for this update and also refined the compensation reporting format to enable more detailed comparisons.³ The current rulemaking follows the preliminary meetings and offers several proposals.

Discussion

In D.05-11-031, we expressed our appreciation for the parties' collaborative efforts. The collaborative spirit has continued, and at the preliminary meetings we explored the possibility of avoiding a formal proceeding altogether. However, our quick review of the data sets suggests that they leave open several questions; in addition, issues have arisen regarding the circumstances recognized in D.05-11-031 as justifying an increase particular to an individual representative. Consequently, we are instituting this rulemaking as originally planned.

Thanks to the preliminary meetings, however, we have a focused set of proposals well-suited to resolution through notice-and-comment rulemaking. The proposals are described below.

1. Should the Commission adopt a general cost-of-living adjustment for intervenor rates for work performed in 2006?

² The Commission's Fiscal Office records show, for Fiscal Years 2002-2005, that average annual employee salaries increased by: 1.6% for Attorneys; 1.6% for Regulatory Analysts; and 3.6% for Engineers.

³ The preliminary meetings were held on March 29 and June 1, 2006, before and after the utilities submitted their new data sets.

As noted earlier, the Commission in D.05-11-031 did not approve a general increase for 2005 rates compared to 2004 rates. Several factors suggest a general increase, on the order of 3%, may be appropriate for 2006.

One factor is that the rate of inflation in the economy as a whole was higher in 2005 compared to the 2004 data relied on in D.05-11-031.⁴

Another, possibly more significant factor is an apparent flaw in our methodology for considering the rates paid by utilities. In D.05-11-031, we examined those rates on the basis of year-over-year total cost; we did not consider how rates paid to individual representatives varied from year to year. The Utility Reform Network (TURN) argued that our methodology could mask actual increases in rates depending on the fortuity of which representatives a utility might use in given years. Accordingly, the utilities were directed to prepare two rate analyses, one analysis replicating that used for D.05-11-031, and a sensitivity analysis tabulating rates paid to individual representatives actually used by the reporting utility in each of the past three calendar years (2003, 2004, 2005).

The results tend to confirm TURN's argument. The sensitivity analysis tracking individual representatives shows modest increases in rates. In contrast, the analysis based on our original methodology produces anomalous results in some cases. For example, a utility might report a decrease in rates paid its senior attorneys as a group, but the decrease may result from a large number of

⁴ We found inflation for 2004 running at about 2.7% on the basis of reports by the Social Security Administration, the U.S. Department of Labor, and the Federal Reserve Bank. The same sources report a 2005 range of 3.6% to 4.1% depending on the reporting period (which varies slightly by source and generally does not coincide with the calendar year).

attorneys moving up that year from the intermediate level to the senior level: The attorneys moving up received pay increases but the infusion of lower-paid attorneys caused a drop in the range of rates within the senior level. In this example, the utility may (or may not) be incurring lower overall costs of representation, but it is not actually paying lower rates.

In light of these factors, a general 3% cost of living adjustment (COLA) to the 2005 ranges adopted for attorneys and experts seems reasonable. The table below shows the ranges adopted in D.05-11-031 and the ranges as modified by the proposed COLA (with rounding to \$5 increments).

Hourly Intervenor Rate Ranges for 2006
(2005 Ranges from D.05-11-031 x 3%, rounded to nearest \$5)

Years of Experience	2005 Range	2006 Range
Attorneys:		
13+	\$270 - \$490	\$280 - \$505
8 - 12	\$270 - \$325	\$280 - \$335
5 - 7	\$250 - \$270	\$260 - \$280
3 - 4	\$185 - \$220	\$190 - \$225
0 - 2	\$135 - \$190	\$140 - \$195
Experts		
	\$110 - \$360	\$115 - \$370

Parties are invited to comment on the proposed COLA and any implementation issues they see.

2. Should the Commission specify experience levels for experts as it does for attorneys?

In collecting data on experts' rates for purposes of D.05-11-031, we did not generally disaggregate by levels of experience, nor did we distinguish on the basis of expertise (economists, engineers, etc.). As a result, D.05-11-031 adopted

a single broad range of rates (\$110-360) for all experts. To achieve greater precision, we ordered the utilities, in their new data sets, to disaggregate expert rates by job classification and by three levels of experience relevant to the classification (0-2 years, 3-9 years, and 10 or more years).

The consensus at the preliminary meetings was that the new data sets did not achieve greater precision. Defining job classifications was difficult, might vary from utility to utility, and might or might not reflect the expert's academic training. Moreover, even for large companies such as the reporting utilities, the degree of disaggregation we required could result in categories with a tiny number of data points. In short, the results were not what we hoped.

The Union of Concerned Scientists (UCS) made a proposal at the June 1, 2006 meeting regarding rates for experts. The proposal, in essence, is a simple method for establishing experience levels and rate ranges for experts using the experience levels adopted for attorneys in D.05-11-031. UCS' proposal is detailed in a follow-up letter to the meeting participants on June 15, 2006; we reproduce the letter in Appendix A to this Order Instituting Rulemaking (OIR).

As a preliminary analysis of the UCS proposal, we reviewed all intervenor compensation award decisions issued in the 12-month period July 2005 to June 2006 that adopted hourly rates for experts who performed work in 2005. We found 35 experts whose experience could be identified, and we then compared the adopted rates to rates that would result from using the UCS proposal. As summarized in the following table, we found that under the UCS proposal, rates for eight experts would remain unchanged, while rates for the other 27 experts would increase from 2% to 86%, with a median increase of about 33%. Appendix B lists all 35 experts and relevant rates.

Rate Increase Resulting from UCS Proposal

# Experts	% Increase
8	0%
2	2%
6	10-20%
13	25-50%
6	60-85%
Total 35	Median 33%

These increases result primarily from the establishment of floor rates for each rate range (compared to the single floor rate of \$110/hour for all experts in D.05-11-031). Additionally, the proposed UCS adjustments appear to be based on total work experience; they are unrelated to the individual expert’s education, *applicable* experience (for purposes of the work that is the subject of the compensation requests), and services provided. Since education and services provided (in addition to experience) are basic criteria for setting hourly rates under the statute, a proposal that would result in large changes to hourly rates without reference to those criteria is unreasonable. Consequently, the UCS floor rates are unacceptable.

The UCS proposal, however, includes some points worth further review, particularly the development of the five experience levels and establishment of ceiling rates for each level. We think the UCS proposal could be combined with a requirement that an intervenor requesting compensation perform a “peer group analysis” for the expert(s) the intervenor plans to use in 2006. For the peer group analysis, the intervenor would refer to (1) the adopted 2005 rates for

the 35 experts mentioned earlier and shown in Appendix B, (2) the ceiling rates⁵ for the relevant level per the UCS proposal, and (3) various other factors. These other factors include, but are not limited to: whether the experience is relevant to the work performed by the representative; the complexity of the work performed for the subject proceeding; the representative's level of responsibility (e.g., principal *vs.* associate in a consulting firm); the degree of specialization needed to complete the work; membership in professional organizations or societies; and any honoraria awarded. Finally, the intervenor would identify comparable experts (the "peer group") and suggest a rate for its representative in relation to that group.

These analyses could be performed and submitted for review and approval in this rulemaking, or they could be performed in the various proceedings where substantial contribution is claimed. We suggest the former, as it is likely to lead to more consistent results, lower administrative costs for everyone, and greater assurance for intervenors. In either case, the analyses would be subject to comment by utilities. We recognize that researching previous decisions awarding intervenor compensation would be necessary for this analysis, that these decisions vary regarding the description of each expert's qualifications, and that such research could become a laborious task.

In brief, we invite comment on the UCS proposal, as modified above, and on the development of an hourly rate database. Although the modifications complicate the proposal considerably, we must balance the desire for simplicity against the requirements to abide by the statutory criteria and to achieve

⁵ If a COLA is approved as proposed in this OIR, the ceiling rates would be adjusted accordingly.

reasonable consistency in the treatment of comparable intervenor representatives.

3. Should the Commission allow a representative without an approved rate for several years to request a rate as a new representative?

We discussed earlier the limited circumstances provided in D.05-11-031 under which an individual representative might seek to have a rate increase approved particular to that representative. There have been a few, rare instances where these limitations may result in anomalies.⁶

Specifically, a senior representative whose hourly rate was last set by the Commission, say, four years ago, is limited to 3% annual increases to 2005. On the other hand, a comparably qualified and experienced representative who had no previous rate set by the Commission might get a considerably higher rate (based in the levels and rate ranges in D.05-11-031) than the representative with prior practice before the Commission.

Parties are invited to comment on whether we should allow a representative without a recently authorized rate to request the Commission to set a rate as it would in the case of a representative new to Commission proceedings (and on the basis of a showing appropriate to a new representative). For purposes of this proposal, we suggest the proposal apply to a representative whose last authorized rate was for work performed in a calendar year four or more years earlier than the work for which compensation is sought.

⁶ TURN raised this issue at the June 1 preliminary meeting and in a follow-up letter to meeting participants dated June 16, 2006.

4. What adjustments to methodology should be made for the next hourly rate analysis (2007 rates)?

Based on the information we have gathered, adopting a 3% COLA to apply to hourly rates for 2006 work appears reasonable. Nevertheless, we continue to seek a methodology that relies less on government indices for inflation in the general economy. Current information does not give us much confidence that we yet have a clearly superior methodology.

The tracking of individual rates, as suggested by TURN, appears to give more reasonable results than the year-over-year total expense comparison we used for setting hourly rates for 2005. The tracking results also align fairly closely with the inflation indices. But other factors suggest that the much desired apples-to-apples comparison still eludes us.

TURN's June 16 letter discusses the results of a study, performed at TURN's request, that tracked compensation for 10 Pacific Gas and Electric Company (PG&E) attorneys over a three-year period (2002-2004):

In the current PG&E GRC, TURN sought data that tracked the rates associated with PG&E attorneys who had performed PUC-related work during each of the three years in question. The substantive portion of the data request follows:

Please select the ten attorneys that have been employed on a full-time basis by PG&E in each year from 2002 through the present, and that devoted the most hours to representing the utility in CPUC proceedings during that period. For each such attorney, please provide the information reported in the utility's General Order 77-K report (G.O. 77-L for reports after D.04-08-055 issued), broken into the following categories:

- a. Base pay or base compensation;
- b. Incentive payments; and

- c. Other pay (includes overtime, performance rewards, vacation buybacks, imputed incomes, and any other miscellaneous accounts).

PG&E’s response consisted of a table setting forth the requested information. The table below replicates that response, with the three components merged into a total for each year.

Attorney No.	2002 Total	2003 Total	2004 Total
Attorney 1	\$295,982.49	\$357,766.31	\$330,732.30
Attorney 2	\$219,440.07	\$209,953.35	\$242,168.03
Attorney 3	\$221,173.92	\$255,922.15	\$247,763.40
Attorney 4	\$281,737.17	\$313,763.71	\$302,248.78
Attorney 5	\$219,829.96	\$271,262.50	\$247,882.50
Attorney 6	\$142,187.28	\$139,227.93	\$152,111.88
Attorney 7	\$213,234.76	\$195,484.08	\$221,217.66
Attorney 8	\$264,931.38	\$300,022.00	\$285,215.70
Attorney 9	\$278,855.28	\$307,735.10	\$294,744.18
Attorney 10	\$261,295.20	\$246,385.19	\$272,924.96

Dividing the total of the three categories reported for each year by the 1747.2 “productive hours” used in the utility calculations in R.04-10-010 would produce an equivalent hourly rate for each attorney. Those rates can then be compared year-to-year to determine the rate increases for each individual. ... the “rates” for these attorneys increased from 4 to 12 percent from 2002 to 2004, with an average increase of 8 percent. TURN submits that such individual-specific information is a more valid indicator of changes to the rates paid by the utilities than are the ranges developed in D.05-11-031.

As TURN notes, the compensation for all 10 attorneys is indeed higher in 2004 than it was in 2002. But this increase is not steady: Four attorneys in the

sample had lower compensation in 2003 than in 2002, and six different attorneys had lower compensation in 2004 than in 2003. This instability may be explained in various ways besides a change in base compensation. Bonuses may vary from year-to-year, and a representative may be away from work for an extended period, for example on parental leave.⁷

These observations suggest that we may be able to draw more robust conclusions about the escalation of hourly rates by looking at data for a substantial period, say, the last four years. We can continue for now to apply both TURN's approach and our own approach in analyzing the data.⁸

Conceivably, by developing a long-term trajectory for hourly rates, error on the high or low side will even out over time. This seems an attractive possibility, and we invite the parties to comment on the suggestion generally, and how to implement it if they consider it worth exploring.

5. The hourly rate charged by "outside" representatives does not establish the market rate for their services.

In its June 16 letter, TURN argues that the market rate the Commission has established for pricing the services of an "in-house" attorney or expert (that is, a representative on the intervenor's own staff) is not necessarily appropriate for pricing the services of an outside attorney or expert. For these outside

⁷ It would be interesting to see how the same 10 attorneys fared in 2005, and specifically whether their average compensation continued to rise, with as many individual exceptions as before. Since the 2005 data should now be available, PG&E is invited to supplement the GRC table, and all parties are invited to comment generally on TURN's tracking approach as exemplified here.

⁸ We note that when the utility data for 2006 is collected, we will already have four years' worth of compensation available to us.

representatives, TURN proposes that the Commission consider using their actual rate as billed, even when the billed rate exceeds the hourly rates otherwise approved by the Commission.⁹ We reject this proposal for reasons discussed below.

First, the intervenor compensation statute (§ 1806) instructs us to consider three factors, namely, a representative's training, experience, and services. The statute does not indicate we should adopt two sets of hourly rates further differentiating between representatives solely on the basis of whether or not they are on the intervenor's staff. Instead, we have adopted a single set of "blended" rates (combining hourly rate data for in-house and outside representatives). TURN cannot have it both ways: a blended rate for its staff representatives and the as-billed rate for its outside representatives.

Second, the § 1806 compensation standard consists of two parts, a "may not exceed" part, which refers to the rate actually paid by the Commission or utilities, and a part which refers to market rates generally. The Commission need only "take [these rates] into consideration." Neither of these parts compels us to set intervenors' hourly rates at levels that reach the highest rates to be found in the relevant specialities, whether or not a utility on occasion pays such rates. To

⁹ TURN specifically proposes, "If the intervenor can demonstrate that the agreed-upon hourly rate is the same as that charged to other hourly-fee-paying clients during the same period, there should be at least a rebuttable presumption that the rate meets the 'market rate' standard of Section 1806. And particularly where the intervenor's outside attorney or expert works on a matter for which the utility is also relying (in whole or in part) on an outside attorney or expert, and the market rate for the intervenor's outside attorney or expert compares favorably with the rate the utility paid, reducing the authorized rate based on the 'blended' rate ranges of D.05-11-031 is inappropriate (at least in TURN's view)."

the contrary, § 1802(a), in defining “compensation,” refers to reasonable advocate’s and expert witness fees. Reading §§ 1802(a) and 1806 together, we conclude that the statute contemplates our establishing a reasonable range of rates for representation. The range should not be so low as to effectively preclude intervenors from hiring qualified representatives, nor so high as to remove the incentives for intervenors to negotiate vigorously for representation and to carefully manage their litigation budgets.

We acknowledge that utilities sometimes use representatives whose hourly rates may exceed the high end of our ranges for attorneys and experts. Such use is uncommon, though now we do not have data on how often the utilities exceed the high end. We therefore direct the utilities to submit data showing: 1) the total number of utility representatives (in-house and outside) in the data sets submitted this spring; 2) the number and percent of those representatives who were paid hourly rates in excess of the established ranges for work performed in 2005; and 3) the percent of total hours worked by representatives in 2005 paid in excess of the ranges.

We also invite parties to comment on TURN’s proposal. Comments should include what types or standards of justification would be necessary to demonstrate where and when the requested (higher than maximum) rate is reasonable.

Categorization, Need for Hearing, Scoping

Pursuant to Rule 6(c)(2),¹⁰ we determine this to be a quasi-legislative proceeding, as defined in Rule 5(d).

¹⁰ This and later rule references are to the Commission’s Rules of Practice and Procedure, unless otherwise noted.

Evidentiary hearings should not be needed. We will rely instead on notice-and-comment procedure, which the Assigned Commissioner may supplement by further meetings, similar to those preceding this OIR, if deemed appropriate. The scope of the proceeding is fairly delineated by the discussion of proposals earlier in this OIR.

We want to conclude this proceeding quickly, to minimize uncertainty for 2006 hourly rates. Our schedule is therefore compressed; however, to the extent major revisions are made to any of the proposals, a further round of comments may be invited. All intervals are approximate in the schedule outlined below; definite dates will be established by ruling after this OIR is issued.

Schedule

Day 1	Issuance of OIR
Day 20	Comments on Proposals; Additional Utility Data
Day 30	Replies
Day 45	Issuance of Draft Decision
Day 65	Comments on Draft Decision
Day 70	Replies
Day 80	Commission Decision

Service of OIR

The initial service list for this OIR is attached as Appendix C; it is the list used for the preliminary meetings discussed earlier, with modifications and additions requested by attendees. Intervenors, utilities, and others may have their names added to the service list by calling or sending an e-mail to the

Commission's Process Office (415-703-2021; prc@cpuc.ca.gov).¹¹ Parties are encouraged to use the Internet as much as possible for serving documents, and for that purpose they are referred to Rule 2.3.1 (service by electronic mail).

Finding of Fact

The proposals in the foregoing OIR for adjusting hourly rates and ratesetting methodology for compensation work performed in 2006 by intervenors' representatives appear reasonable in light of data submitted by utilities, discussion at meetings before this OIR, and letters submitted by TURN and UCS.

Conclusion of Law

The compensation proposals in the foregoing OIR should be further considered through a process of public review and comment.

IT IS ORDERED that:

1. The following utilities are respondents in this proceeding: Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Gas Company; Southern California Edison Company; Pacific Bell Telephone Company d/b/a AT&T California; and Verizon California Inc. However, the compensation rules adopted in this proceeding shall apply to all electric, gas, water and telephone utilities, as specified in Public Utilities Code Section 1801.3(a). All such utilities are invited to participate.
2. The proceeding is quasi-legislative. No hearings are required.

¹¹ The updated service list will be published at the Commission's Internet site; when serving documents, parties must use the list as published on the date of service.

3. The respondents shall file and serve additional data, and all parties may file and serve comments, consistent with the foregoing scoping and schedule.

4. The Assigned Commissioner or Administrative Law Judge may adjust the schedule in the Order Instituting Rulemaking as may be appropriate in light of comments on the proposals but consistent with timely adoption of hourly rates for intervenors.

This order is effective today.

Dated August 24, 2006, at San Francisco, California

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX A
Letter of June 15, 2006 from
Union of Concerned Scientists
(Table 2 omitted)

The Union of Concerned Scientists (“UCS”) submits this letter proposal for the setting of the rates of experts and non-attorney advocates (hereafter “experts”) in Commission decisions awarding intervenor compensation. This letter is submitted in response to discussions during the informal meeting on intervenor compensation rates chaired by both of you on June 1, 2006, and specifically, in response to ALJ Kotz’s suggestion that UCS follow up in writing the oral proposal we made that day regarding the implementation of D.05-11-031 in the setting of expert rates.

This proposal responds to the concern raised by UCS, and echoed by others, that D.05-11-031, while it establishes five experience tiers and associated rate ranges for attorneys, sets no corresponding experience tiers and rate ranges for experts. Establishing experience tiers with associated rates is important because it provides a structured, consistent approach for recognizing the relevance of experience level in the setting of intervenor compensation rates both for established and new intervenors at the Commission. UCS understands that the inconsistent treatment contained in D.05-11-031 with respect to attorney and expert rates is due solely to the fact that the respondent utilities provided a more limited data set for expert rates than was provided for attorney rates. This in turn made the Commission reluctant to establish the same kinds of experience tiers and associated rate ranges for experts that it did for attorneys. UCS submits that this data limitation does not prevent the Commission from reasonably applying consistent treatment to both attorneys’ and experts’ rates in this respect and we believe that is important to do so as matters of equity and fairness and the well being of the intervenor compensation program. Our proposal responds to this need.

The absence of expert experience tiers opens up the possibility that the Commission may award an extremely experienced expert, e.g., someone with 20 years’ experience, a rate that is at the very low end of the compensation range for experts. Such a result is preventable in the case of attorneys, whether they do or do not have a previously established intervenor rate. For an attorney new to the intervenor compensation program the Commission would award a rate

within the range for that attorney's experience level, i.e., the range established for attorneys with at least 13 years of experience. Thus, this attorney would receive a rate of at least \$270 per hour, which is twice the lowest attorney rate and 38% of the way between the lowest attorney rate (\$135) and the highest attorney rate (\$490). For an established intervenor attorney whose previous rate is below the applicable rate range, D.05-11-031 provides a means for increasing that rate to within the applicable range for the attorney's experience tier. However, since there are no corresponding experience tiers for experts, a comparably experienced expert, new or established, potentially could receive a rate that is at or near the low end of the expert rate range established by D.05-11-031.

It would seem more fair and consistent if this expert's rate were set using the equivalent parameters used for attorneys. Applying this principle would mean that the expert's rate would also be no lower than 38% of the way up from lowest expert rate (\$110) to the highest expert rate (\$360), or \$205. As it stands currently, this expert could conceivably receive a rate well below this level.

Since UCS trusts that the Commission originally intended to develop experience tiers for experts (i.e., we believe that no inequity between attorneys and experts was intended), we propose that experience tiers be established for expert rates that are identical to the attorney experience tiers, and further, that expert rates be derived for each tier that are exactly proportionate to the rate ranges that have been established for attorneys. For example, if the *attorney* rate range for the lowest experience level spanned 20% of the entire *attorney* range for all experience levels, then the rate range for the lowest *expert* experience level would span 20% of the entire *expert* rate range. The existing low and high rates (\$110 and \$360, respectively) for experts of course would remain the same. We further propose that the ALJ Division apply this experience-based rate structure when making rate determinations, just as it currently does for attorneys. We do not believe that D.05-11-031 needs to be changed to bring this into effect since the ALJ Division is obligated in any case to apply judgment in awarding intervenor rates. Adopting our proposal would simply be creating a consistent, reasonable structure for making such judgments in setting experts' rates, as has been done in the setting of attorneys' rates.

Table 1 on the following page contains the resulting experience-based rate ranges for experts using this method. In the electronic transmission of this letter Table 2 is also provided, which is the Excel spreadsheet version of Table 1. Table 2 enables the reader to view the formula used to derive the expert rates.

Table 1. Derivation of Intervenor Expert Rate Ranges by Experience Level Based on Current Intervenor Attorney Rate Ranges

Experience Tier (yrs)	Rate Range	Attorneys' Hourly Rate (\$)	Attorney "Escalation Factor"	Derived Experts' Hourly Rate with Attorney Escalation Factor Applied (\$)
0 to 2	Low	135	0.00	110
	High	190	0.15	<i>149</i>
3 to 4	Low	185	0.14	<i>145</i>
	High	220	0.24	<i>170</i>
5 to 7	Low	250	0.32	<i>191</i>
	High	270	0.38	<i>205</i>
8 to 12	Low	270	0.38	<i>205</i>
	High	325	0.54	<i>244</i>
13+	Low	270	0.38	<i>205</i>
	High	490	1.00	360

NOTES:

1. Rates in **boldface** are those contained in D.05-11-031. Rates in *italic face* are those derived by applying the escalation factor.

2. The Attorney "Escalation Factor" measures the degree to which a given attorney rate moves from the lowest attorney rate of \$135 to the highest attorney rate of \$490. Thus, a rate exactly in the middle of this range (i.e., \$312.50) would have an escalation factor of 0.5. The calculated Attorney Escalation Rates are then used to derive a corresponding low and high Expert Rate for each experience tier. This is done by multiplying each escalation factor by the span between the lowest and highest Expert Rate, which is \$250 (\$360 minus \$110), and adding the result to the lowest Expert Rate (\$110).

We look forward to your response to this proposal and would be happy to respond to any questions. We have emailed a copy of this letter to the informal distribution list for R.04-10-010 that was used by the Commission to announce the June 1 meeting. We apologize in advance if interested individuals are not on this list and we would appreciate any efforts to forward this letter to such individuals.

Respectfully,

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cc: Informal distribution list for R.04-10-010

(END OF APPENDIX A)

APPENDIX B

2005 Expert Rates
 Adopted Rates Compared to Minimum UCS Proposal Rates
 (Decisions Issued July 2005 - June 2006)

Expert	Experience (Yrs.)	Adopted 2005 Rate (\$) No COLA Added (Decision #)	UCS Min. Rate (\$) No COLA	Approx. % Increase
Marcus	13+	210 (D0604012)	210	0%
Weil	13+	250 (D0510009)	250	0%
Morris	13+	210 (D0510030)	210	0%
Nogee	13+	232 (D0604022)	232	0%
Costa	13+	230 (D0604021)	230	0%
Phillips	13+	335 (D0604021)	335	0%
Czahar	13+	240 (D0606049)	240	0%
Gamboa	13+	360 (D0604021)	360	0%
Chabran	13+	200 (D0604036)	205	2%
Thayer	13+	200 (D0601034)	205	2%
Woychik	13+	185 (D0606048)	205	11%
Fowells	13+	180 (D0604036)	205	14%
Fox	13+	175 (D0606056)	205	17%
McCann	10	175 (D0604065)	205	17%
Moss	10	175 (D0604065)	205	17%
Murley	13+	173 (D0604022)	205	18%
Schilberg	13+	165 (D0604012)	205	24%
Vaeth	5	150 (D0604027)	191	27%
Nahigian	13+	155 (D0604012)	205	32%
Reid	12	150 (D0606026)	205	37%
Miller	13+	150 (D0604005)	205	37%
Montes	13+	150 (D0604036)	205	37%

Expert	Experience (Yrs.)	Adopted 2005 Rate (\$) No COLA Added (Decision #)	UCS Min. Rate (\$) No COLA	Approx. % Increase
Rafferty	4	100 (D0606056)	145	45%
Ryan	13+	140 (D0604028)	205	46%
Hall	13+	140 (D0604028)	205	46%
Mitchell	13+	140 (D0602016)	205	46%
Fenn	12	130 (D0605037)	191	47%
Ruszovan	13+	135 (D0604012)	205	52%
Schlegal	13+	135 (D0601034)	205	52%
Galloway	7	120 (D0604022)	191	59%
Frehling	6	120 (D0605037)	191	59%
Patrick	13+	120 (D0605037)	205	71%
Wang	8	120 (D0604005)	205	71%
Chang	6	110 (D0604005)	191	74%
Adams	13+	110 (D0509037)	205	86%

(END OF APPENDIX B)

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Last Update on 07-JUL-2006 by: SMJ
R0410010 INITIAL LIST

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