

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

RESOLUTION

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

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>.

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. Within nonfarm industries, four sectors saw month-over declines. Sectors that lost jobs in December in order of job loss magnitude were: government; trade, transportation and utilities; construction; and mining and logging.⁴

In October 2010 at its annual exposition⁵, The California Association of Realtors (C.A.R.) issued a gloomy forecast for California Real Estate in 2011.⁶ California home sales for 2010 are forecast to decline 10% from 2009 sales and sales in 2011 are projected to increase by a mere 2%. 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. Trends in housing sales and their values are important because lower property tax estimates affect the funding of programs supported by California's General Fund.

In November of 2010, the California Legislative Analyst Office (LAO) released its California Fiscal Outlook for the 2011-12 Budget.⁷ The report's forecast of California's General Fund revenues and expenditures shows that the state must address a budget problem of \$25.4 billion between now and the time the Legislature enacts a 2011-12 state budget plan. No COLA or Inflation Adjustments are assumed in the estimates by the LAO. The report states that "in line with the Legislature's policy in recent years, we generally have not made annual cost-of-living (COLAs) or price increase adjustments over our forecast period (healthcare costs being the only exception since they are subject to inflationary increases.) In particular, in the 2009-2010 budget package the Legislature added to state law a provision stating that most programs, including universities, the courts and various social services programs, would no longer receive "automatic" COLAs and inflation adjustments. The impact of not adjusting for COLAs and inflation means that the purchasing power of current state expenditures will be eroded by inflation over the forecast period and the state will not be able to maintain a "current services" budget. Should the Legislature choose to provide these adjustments in future years, we estimate that the state's annual budget problems would be even greater than those indicated in our forecast – by about \$400 million in 2011-12 and, if inflation adjustments were provided each year during the forecast, by as much as \$3 billion in 2015-2016. If the Legislature were to approve additional state employee pay or benefit increases (beyond those included in recent labor agreements), that also would increase

⁴ California Market Review, December 2010 at 8.

⁵ <http://www.car.org/newsstand/newsreleases/2010newsreleases/2011forecast/>

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

⁷ http://www.lao.ca.gov/2009/bud/fiscal_outlook/fiscal_outlook_111809.pdf

costs above those indicated in our forecast.”⁸ In sum, the report concludes that “the solutions needed to balance the budget will mean unavoidably painful sacrifice by today’s Californians. The benefit of this sacrifice would be putting the state on a sound fiscal footing. That sound footing may allow future Californians to live in a place where the annual state budget process is a chance to improve government’s ability to serve its residents.”⁹

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.

⁸ *Ibid.* at 4.

⁹ *Ibid.* at 2.

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. On March 14, 2011, we received Opening Comments from The Utility Reform Network (TURN). We have reviewed TURN's comments and made changes to some areas of this Resolution to address TURN's concerns.

Findings

1. For work performed in 2011, no COLA adjustment should be adopted given our review of various indices and economic indicators: the continuation of a negative CPI-W; a sluggish economy; high rates of unemployment and a poor fiscal outlook projected for the 2011-2012 period by the California Legislative Analyst's office.
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 March 24, 2011, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President

TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

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)