

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-235
Administrative Law Judge Division
March 12, 2009

RESOLUTION

RESOLUTION ALJ-235. Adopting Intervenor Compensation Rates for 2009 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 2009 and address other related matters.

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 COLA for work performed by those eligible to claim intervenor compensation in 2009 that considers the federal inflation indexes used to compute the 2008 COLA, to be effective on January 1 of each year.

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 (2002-2009) SSA COLA and other price and wage indexes.

No current index specifically targets rates for services by regulatory professionals (attorneys, engineers, economists, scientists, etc.). As such, our findings have historically been weighted heavily to SSA COLA and similar data, but we exercise our informed judgment based on a review of indices measuring inflation in consumer prices, wages, and the state and national economy.

The SSA calculates the December 2008 COLA by measuring the increase in the average Consumer Price Index (CPI-W) from the third calendar quarter of 2007 to the third quarter of 2008. These figures are derived from the monthly CPI-Ws developed by the BLS:

Month	CPI-W for:	
	2007	2008
July	203.700	216.304
August	203.199	215.247
September	203.889	214.935
Total	610.788	646.486
Average (rounded to the nearest 0.001)	203.596	215.495

The percentage increase in the CPI-W from the third quarter of 2007 through the third quarter of 2008 is 5.8%. The calculation of this percentage increase is:

$$(215.495 - 203.596) / 203.596 \times 100 = 5.8\% \text{ (rounded to the nearest one-tenth of 1\%)}$$

Although the Commission has traditionally relied on annual SSA COLA to guide cost of living adjustments for intervenor compensation, the rate established for 2008 is particularly problematic. During the third calendar quarter of 2007 to the third quarter of 2008,¹ gasoline prices remained at all time highs, resulting in a substantial increase to the 2008 cost-of-living allowance. Since September 2008, gasoline prices have dropped to levels not seen since 2004. In its December 16, 2008 news release, the Bureau of Labor Statistics² reports that the “energy index fell 17.0% in November, the decrease was about twice the October decline and energy prices are now 32.4% below the July peak earlier this year. The gasoline index fell 29.5% in November and gas prices are now 47.0% below their July peak. The natural gas index also declined in November, the fourth consecutive decrease. The CPI-W for Urban Wage Earners and Clerical Workers decreased 2.3% in November, prior to seasonal adjustments. The November level of 207.926 was 0.7% higher than in November 2007.” Given the current price of gas, continued rising unemployment rates in California and the continued decline in home values and sales in the Bay Area, reliance solely on the SSA COLA to determine an appropriate 2009 COLA increase for intervenors is inappropriate given the dramatic downward move made in the CPI-W during the latter half of 2008. The percentage decrease in the CPI-W from July-September 2008 and October-December 2008 is -3.4%, calculated as follows:

¹ <http://www.ssa.gov/OCAT/COLA>

² <http://www.bls.gov/news.release/cpi>

2008 Months (CPI-Ws)			
July	216.304	October	212.182
August	215.247	November	207.296
September	214.935	December	204.813
Totals	646.486	Totals	624.291
Averages	215.495	Averages	208.097

$$(208.097-215.495) / 215.495 \times 100 = -3.4\%$$

In considering an appropriate COLA increase, we also take into consideration recent economic trends. Most notable has been the continued increase in unemployment rates. In October 2008, the national unemployment rate was 6.1%, not seasonally adjusted, up from 4.4% a year earlier.³ The California unemployment rate was 8.4% in November 2008.⁴

In a press release dated December 11, 2008, the UCLA Anderson Forecast states that “California will join the nation in its recession, though its impact will be felt differently across the State. The Inland Empire, Orange County, the East Bay and Central Valley areas will be hit the hardest as the recession provides a double whammy with a generalized downturn in demand and a postponement of a recovery in residential construction. Coastal regions will be impacted by declining imports coming through California ports, while the global recession weakens demand for manufactured exports. The outlook for California calls for a very weak fourth quarter of 2009 with the glimmer of recovery in the fourth quarter. The unemployment rate is forecast to rise as high as 8.7% next year and remain at that level through 2010.”⁵ In addition, we note that at least two prominent law firms with utility practice groups in California closed in 2008 indicating the likelihood of some softening in the market rates for attorneys.

Given all of these factors, we conclude that no COLA should be adopted for 2009 intervenor rates.

COLA Adjustments for 2009 and Resulting Rates

After reviewing the available data and based on the discussion above, we do not adopt any COLA adjustment for 2009. The table below shows the adopted ranges for rates for work performed by intervenor representatives. The rates for 2006 and 2007 were

³ Bureau of Labor Statistics Economic News Release, dated December 2, 2008.
<http://www.bls.gov/cpi/>

⁴ Employment Development Department’s California Labor Market Review, October 2008, p. 1. <http://www.labormarketinfo.edd.ca.gov>

⁵ UCLA Anderson Forecast, dated December 11, 2008.
<http://www.uclaforecast.com/contents/archive/2008/media>

adopted in D.07-01-009. The rates for 2008 were adopted in D.08-04-010 and remain the same for 2009.

Hourly Intervenor Rate Ranges for 2006 - 2009
(2009 rates = 2008 rates)

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

We direct the CALJ, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for work performed in 2010, and in subsequent years in the absence of a market analysis study, that considers the same factors used to compute the 2009 COLA, to be effective on January 1 of each year.

COMMENTS

Pub. Util. Code § 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. No comments were filed.

FINDINGS

1. For work performed in 2009, 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 four years (2005-2009).
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 2010, 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 2009, 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 2009, 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 2010, 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 2010 COLA, and subsequent years if necessary, using the same factors used to compute the 2009 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 12, 2009, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A

**Comparison of Inflation Indexes
(Percent Increase from previous year)
2002-2009**

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%		Resolution ALJ-235

(END OF APPENDIX A)

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 2002-2008. www.edd.ca.gov.

⁶ Commission order authorizing the intervenor rate increase.