
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 26, 2019

Agenda ID #17234

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-357

This is the draft Resolution of Administrative Law Judge (ALJ) Cooke regarding Adopting Intervenor Compensation Rates for 2019 and Addressing Related Matters. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

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 18, 2019, and reply comments shall be served no later than March 25, 2019. 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 ALJ Cooke at mlc@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:jt2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-357
Administrative Law Judge Division
March 28, 2019

RESOLUTION

RESOLUTION ALJ- 357. Adopting Intervenor Compensation Rates for 2019 and Addressing Related Matters.

SUMMARY

In today's resolution, we adopt a cost-of-living adjustment (COLA) of 2.35 percent for work performed in the 2019 calendar year. The approved hourly rate ranges for work performed in 2019 are shown in Table 2. This COLA was calculated using the methodology approved in Resolution ALJ-303 and is based on the economic changes from the fourth quarter of 2017 to the fourth quarter of 2018.

The Commission intends to adopt a COLA for the 2020 calendar year, during the first quarter of 2020 using the same methodology and data reflecting economic changes from the fourth quarter of 2018 to the fourth quarter of 2019. As is currently the practice, the Commission will automatically apply the COLA to pending intervenor compensation requests claiming hours for work performed in 2019. This will ensure the fair application of the COLA to all those who make substantial contributions to Commission proceedings in 2019.

BACKGROUND

The Commission first established its hourly rate ranges based on compensation data provided by the major utilities.¹ Since then, the Commission has updated the hourly rate ranges approximately annually. Each update adjusted the ranges by means of a cost-of-living adjustment (COLA), adopted after public review and comment.²

¹ See Resolution (Res.) ALJ-184.

² The Commission declined to approve a COLA for the years 2009, 2010, 2011, and 2015. See Res. ALJ-235, Res. ALJ-247, Res. ALJ-267 and Res. ALJ-308. However, COLAs were approved for 2012, 2013, 2014, 2016, 2017 and 2018. See Res. ALJ-281, Res. ALJ-287, Res. ALJ-303, Res. ALJ-329, Res. ALJ-345 and Res. ALJ-352.

Res. ALJ-281 recognized the challenges of performing a comprehensive “market rate study” for regulatory services and focused on improving the process for annual adjustments to the existing hourly rate ranges. Res. ALJ-281 directed the Chief Administrative Law Judge (CALJ) to convene a public workshop to discuss the adjustment process and, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for intervenor work performed in 2013, using factors relied on previously for this purpose or on such additional or alternative factors recommended in the public workshop.

Res. ALJ-287 approved a two-percent COLA for intervenor awards of compensation for work performed in calendar year 2013. This adjustment was developed through a consensus process undertaken by the 2012 workshop participants. The Commission found this adjustment to be reasonable because it was well supported and consistent with the forecasts and indices the Commission regularly relies on for ratemaking purposes and was recommended by parties representing diverse interests. Among the reasons cited for parties’ consensus was their desire to minimize the time and resources devoted to addressing the 2013 hourly rate adjustment in hopes of the Commission and the parties more quickly turning their attention to the task of reviewing the methodology for market rate studies and hourly rate updates. Res. ALJ-287 directed the CALJ to continue the informal process that was used to develop the COLA for 2013.

On December 2, 2013, the Commission held a public workshop to continue the effort of developing a consistent review process for intervenor hourly rates. The workshop also discussed the findings of the State Auditor’s report³ on the intervenor compensation program, among other topics. As a result of the December 2013 workshop, the Commission has implemented several changes, including establishing a consistent methodology for developing annual COLAs.

Another workshop was held on March 22, 2016, to consider, among other things, whether a request for proposals is an appropriate path forward for conducting a market rate study, and whether and how intervenors should participate in that process.

On January 18, 2018, the Commission released a request for offer for a contractor to conduct an hourly rates market study and Level4Ventures was selected. Level4Ventures will analyze the relationship between experience and compensation for advocates and expert witnesses that work in the administrative law and regulatory sector and the analysis will determine what are reasonable advocate and expert witness fees for those that practice before the Commission.

³ The audit report is available at: <http://www.bsa.ca.gov/reports/summary/2012-118>.

Level4Ventures held a workshop on August 1, 2018, to review and finalize the list of Intervenor labor categories, labor category descriptions, and experience levels. Currently, Level4Ventures is incorporating the feedback received from the workshop in the development of the intervenor hourly rates.

Cost-of-Living Adjustment

Res. ALJ-303 adopted the following formula for calculating the COLA:

| |
|---|
| $\frac{\frac{\% \Delta \text{CPI-U} + \% \Delta \text{CPI-W}}{2} + \frac{\% \Delta \text{ECI (Civilian)} + \% \Delta \text{ECI (Private Sector)} + \% \Delta \text{ECI (Government)}}{3}}{2} =$ |
| COLA |

This formula utilizes the indices of the Consumer Price Index, the Consumer Price Index for Urban Wage Earners and Clerical Workers, and the Employment Cost Index for civilian workers, private workers, and government workers. The indices are released on a set schedule, which will allow the Commission to determine COLAs in a timely, predictable, and consistent manner.

The following table shows the indices used for the prior (2018) and current (2019) COLAs:

| Table 1 | | | | | |
|----------|------------------------|------------------------|----------------------|----------------------|----------------------|
| | CPI-U | CPI-W | ECI (Civilian) | ECI (Private) | ECI (Government) |
| 2018 | 246.524 (Dec. 2017) | 240.526 (Dec. 2017) | 129.8 (Dec. 2017) | 130.6 (Dec. 2017) | 126.7 (Dec. 2017) |
| 2019 | 251.233 (Dec. 2018) | 244.786 (Dec. 2018) | 133.8 (Dec. 2018) | 134.7 (Dec. 2018) | 129.7 (Dec. 2018) |
| % Change | 1.910% | 1.771% | 3.082% | 3.139% | 2.368% |

Applying the indices reflecting changes since the COLA adopted by Res. ALJ-303 results in a COLA as follows:

$$\frac{1.910\% + 1.771\%}{2} + \frac{3.082\% + 3.139\% + 2.368\%}{3} = 2.35\%$$

Hourly Rates

Table 2 shows the most recently adopted ranges for hourly rates for work performed by intervenor representatives. The rates for 2019 are adopted in today's resolution.⁴ The adopted hourly rate ranges are rounded to the nearest five-dollar increment.

| Table 2 | | | | | | | |
|---------------------|------------------|------------------|------------------|-------------------------------|-------------------------------|------------------|------------------|
| Years of Experience | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| Attorneys | | | | | | | |
| 0-2 | \$160 – \$215 | \$165 – \$220 | \$165 – \$220 | \$165 – \$225 | \$170 – \$230 | \$175 – \$235 | \$180 – \$240 |
| 3-4 | \$210 – \$245 | \$215 – \$250 | \$215 – \$250 | \$220 – \$255 | \$225 – \$260 | \$230 – \$265 | \$235 – \$270 |
| 5-7 | \$290 – \$310 | \$300 – \$320 | \$300 – \$320 | \$305 – \$325 | \$310 – \$330 | \$315 – \$340 | \$320 – \$350 |
| 8-12 | \$310 – \$365 | \$320 – \$375 | \$320 – \$375 | \$325 – \$380 | \$330 – \$390 | \$340 – \$400 | \$350 – \$410 |
| 13+ | \$310 – \$555 | \$320 – \$570 | \$320 – \$570 | \$325 ⁵ – \$575 | \$330 ⁶ – \$585 | \$340 – \$600 | \$350 – \$615 |
| Experts | | | | | | | |
| 0-6 | \$135 – \$195 | \$140 – \$200 | \$140 – \$200 | \$140 – \$205 | \$145 – \$210 | \$150 – \$215 | \$155 – \$220 |

⁴ The rates for 2013 in Res. ALJ-287; for 2014 in Res. ALJ-303; for 2015 in Res. ALJ-308; for 2016 in Res. ALJ-329; and for 2017 in Res. ALJ-345.

⁵ Corrected calculation error in Res. ALJ-329.

⁶ Corrected calculation error in Res. ALJ-345.

| Table 2 | | | | | | | |
|---------------------|------------------|------------------|------------------|------------------|-------------------------------|------------------|------------------|
| Years of Experience | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
| 7-12 | \$165 – \$280 | \$170 – \$285 | \$170 – \$285 | \$170 – \$290 | \$175 ⁷ – \$295 | \$180 – \$300 | \$185 – \$305 |
| 13+ | \$165 – \$410 | \$170 – \$420 | \$170 – \$420 | \$170 – \$425 | \$175 – \$435 | \$180 – \$445 | \$185 – \$455 |

The Commission has various policies and procedures that affect hourly rates in particular circumstances.⁸ These policies and procedures address, among other things:

- Justifying rates higher than those generally adopted.
- Establishing rates for new representatives, or for representatives who have not had an authorized rate within four years prior to a pending request for compensation.
- Requesting increases greater than those generally adopted.
- Receiving step increases for 2008 and beyond.

We continue these previously adopted policies and procedures.

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 on February 26, 2019.

FINDINGS

1. Applying the methodology adopted in Res. ALJ-303 to current indices results in a COLA of 2.35 percent.
2. It is reasonable to allow individuals an annual "step increase" of five percent, twice within each experience level and capped at the maximum rate for that level, as authorized by D.07-01-009.

⁷ Corrected rounding error in Res. ALJ-345.

⁸ See Decision (D.) 07-01-009 and D.08-04-010.

3. It is reasonable to allow individuals with previously approved hourly rates to request a COLA, consistent with today's resolution, for work performed in the 2019 calendar year.
4. It is reasonable to restrict intervenor rates to the adopted 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 adopted rate for that individual's level of experience, in a given year.
6. The rate levels, procedures, and policies herein are consistent with the intervenor compensation statutes (Pub. Util. Code §§1801-1812).
7. It is reasonable for intervenor work performed in 2019, and in subsequent years, to consider hourly rate adjustments by Commission resolution.

Therefore, **IT IS ORDERED** that:

1. For work performed in 2019, intervenors are authorized an hourly rate cost-of-living adjustment 2.35 percent and new hourly ranges are adopted for 2019.
2. The five percent step increase authorized in Decision (D.) 07-01-009 shall continue in 2019. The step increase shall be administered as specified in D.08-04-010.

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 28, 2019, the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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