
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 28, 2020

Agenda ID # 18752

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-387:

This is the draft Resolution of Administrative Law Judge (ALJ) Michelle Cooke regarding Adopting Intervenor Compensation Rates for 2020 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. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list.

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:gp2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-387
Administrative Law Judge Division
[date]

RESOLUTION

RESOLUTION ALJ- 387. Adopting Intervenor Compensation Rates for 2020 and Addressing Related Matters.

SUMMARY

In today’s resolution, we adopt a cost-of-living adjustment (COLA) of 2.55 percent for work performed in the 2020 calendar year. The approved hourly rate ranges for work performed in 2020 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 2018 to the fourth quarter of 2019.

The Commission does not intend to adopt a COLA for the 2021 calendar year, as we plan on implementing the results of the market rate study. As is currently the practice, the Commission will automatically apply the COLA to pending intervenor compensation requests claiming hours for work performed in 2020. This will ensure the fair application of the COLA to all those who make substantial contributions to Commission proceedings in 2020.

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

¹ See Resolution (Res.) ALJ-184.

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

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.

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, Res. ALJ-352, and Res. ALJ-357.

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

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 analyzed 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. On August 1, 2018, a workshop was held with Level4Ventures to review and finalize the list of Intervenor labor categories, labor category descriptions, and experience levels. Feedback from the workshop was incorporated into the development of the intervenor hourly rates. Currently, the intervenor compensation program is working to incorporate the results of the market rate study into the intervenor hourly rates for 2021.

Cost-of-Living Adjustment

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

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

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 (2019) and current (2020) COLAs:

Table 1					
	CPI-U	CPI-W	ECI (Civilian)	ECI (Private)	ECI (Government)
2019	251.233	244.786	133.8	134.7	129.7

	(Dec. 2018)	(Dec. 2018)	(Dec. 2018)	(Dec. 2018)	(Dec. 2018)
2020	256.974 (Dec. 2019)	250.452 (Dec. 2019)	137.7 (Dec. 2019)	138.7 (Dec. 2019)	133.0 (Dec. 2019)
% Change	2.285%	2.315%	2.915%	2.970%	2.544%

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

$\frac{2.285\% + 2.315\%}{2} + \frac{2.915\% + 2.970\% + 2.544\%}{3} = 2.55\%$	
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Hourly Rates

Table 2 shows the most recently adopted ranges for hourly rates for work performed by intervenor representatives. The rates for 2020 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	2014	2015	2016	2017	2018	2019	2020
Attorneys							
0-2	\$165 – \$220	\$165 – \$220	\$165 – \$225	\$170 – \$230	\$175 – \$235	\$180 – \$240	\$185 – \$245
3-4	\$215 – \$250	\$215 – \$250	\$220 – \$255	\$225 – \$260	\$230 – \$265	\$235 – \$270	\$240 – \$275
5-7	\$300 – \$320	\$300 – \$320	\$305 – \$325	\$310 – \$330	\$315 – \$340	\$320 – \$350	\$330 – \$360
8-12	\$320 – \$375	\$320 – \$375	\$325 – \$380	\$330 – \$390	\$340 – \$400	\$350 – \$410	\$360 – \$420

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.

Table 2							
Years of Experience	2014	2015	2016	2017	2018	2019	2020
13+	\$320 – \$570	\$320 – \$570	\$325 ⁵ – \$575	\$330 ⁶ – \$585	\$340 – \$600	\$350 – \$615	\$360 – \$630
Experts							
0-6	\$140 – \$200	\$140 – \$200	\$140 – \$205	\$145 – \$210	\$150 – \$215	\$155 – \$220	\$160 – \$225
7-12	\$170 – \$285	\$170 – \$285	\$170 – \$290	\$175 ⁷ – \$295	\$180 – \$300	\$185 – \$305	\$190 – \$315
13+	\$170 – \$420	\$170 – \$420	\$170 – \$425	\$175 – \$435	\$180 – \$445	\$185 – \$455	\$190 – \$465

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

⁵ Corrected calculation error in Res. ALJ-329.

⁶ Corrected calculation error in Res. ALJ-345.

⁷ Corrected rounding error in Res. ALJ-345.

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

to a vote of the Commission on the resolution. A draft of today's resolution was distributed on _____.

FINDINGS

1. Applying the methodology adopted in Res. ALJ-303 to current indices results in a COLA of 2.55 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.
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 2020 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).

Therefore, **IT IS ORDERED** that:

1. For work performed in 2020, intervenors are authorized an hourly rate cost-of-living adjustment of 2.55 percent and new hourly ranges are adopted for 2020.
2. The five percent step increase authorized in Decision (D.) 07-01-009 shall continue in 2020. 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 _____, the following Commissioners voting favorably thereon:

Alice Stebbins
Executive Director