

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

March 9, 2010

Agenda ID #9268

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-247

This draft resolution regarding cost of living adjustments for intervenor work in calendar year 2010, will be on the agenda at the April 8, 2010 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

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 29, 2010, and reply comments shall be served no later than April 5, 2010. 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 Administrative Law Judge Cooke at mlc@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-247
Administrative Law Judge Division
April 8, 2010

R E S O L U T I O N

RESOLUTION ALJ-247. Adopting Intervenor Compensation Rates for 2010 and Addressing Related Matters.

SUMMARY

In today's resolution, we do not adopt a Cost Of Living Adjustment for work performed by intervenors in calendar year 2010 and address other related matters.

BACKGROUND

Decision (D.) 08-04-010, directs the Chief Administrative Law Judge (ALJ), in consultation with the Commission President, to prepare a proposed resolution recommending a Cost of Living Adjustment (COLA) for work performed by those eligible to claim intervenor compensation in 2010 that considers the federal inflation indexes used to compute the 2010 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 (2002-2010) SSA COLAs and other price and wage indexes.

Historically, our past findings have been weighted heavily on SSA COLA and similar data. In ALJ-235 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 2009. These figures are derived from the monthly CPI-Ws developed by the BLS:

Month	CPI-W for:	
	2008	2009
July	216.304	210.526
August	215.247	211.156
September	214.935	211.322
Total	646.486	633.004
Average (rounded to the nearest 0.001)	215.495	211.001

The percentage increase in the CPI-W from the third quarter of 2008 through the third quarter of 2009 is -2.1%. The calculation of this percentage increase is:

$$(211.001 - 215.495) / 215.495 \times 100 = -2.1\% \quad (\text{rounded to the nearest one-tenth of } 1\%)$$

We evaluate many factors when considering whether or not COLA increases are warranted for intervenor work in 2010. In addition to SSA COLAs, considerable weight is given to recent economic trends. Most notable has been the continued increase in unemployment rates. In December 2009, the national unemployment rate was 10.0%, unchanged from November and up 2.6% from one year ago. The December 2009 seasonally adjusted unemployment rate in California was 12.4%, unchanged from November and up 3.7% from one year ago.¹

¹ California Employment Development Department's Labor Market Review, dated December 2009.

In a February 20, 2010 article in the San Francisco Chronicle² it reports that for the first time, more than half (54.2%) of all homes sold in the nine-county region were bank-owned foreclosures. Their “fire-sale” prices drove the median sales price for existing homes down to \$304,000, a nine-year low. These depressed foreclosures have devastated the market for new construction. Only 340 new homes were sold in the Bay Area in January 2010, almost half of the 657 new homes sold in January 2007, and the slowest January sales since record-keeping 21 years ago. In contrast, a total of 3,918 existing single-family homes changed hands in the nine-county region in January 2010, a big jump from 2,312 sales in January 2008. In spite of the instability of home prices, it appears that many people have decided to buy, simply because of the increased affordability. Counties with the most foreclosures also had the biggest increases in sales volume along with the biggest drops in median price. In Contra Costa County, where 64.4% of all resold homes were foreclosures, sales almost tripled to 1,075 in January, while the year-over-year median price plunged in half, to \$219,500. At the other end of the spectrum, in San Francisco only 16.4% of sales were foreclosures. It appears that where the distress levels are low, homeowners are opting to sit out the market. It remains to be seen whether or not the administration’s plan to rein in foreclosures and stabilize the market will be evidenced in any statistical data soon.

In its fourth quarterly report³ of 2009, the UCLA Anderson Forecast continues its theme from September that the national economy is on a modest growth path that will be accompanied by extraordinarily high rates of unemployment. This slow growth is largely a result of the economy in transition from being an import-oriented/low savings rate one to a more export and higher-savings oriented one. Fueling this transition is the administration’s “weak dollar policy” which encourages exports and discourages the consumption of imports. In a report titled “Lost and Found,” UCLA Anderson Forecast Economist David Shulman grimly notes that there the recent recession established postwar records for declines in stock prices, home prices and employment, resulting in an unemployment rate which has more than doubled in the last decade.

² “Foreclosures ignite hot Bay Area home sales,” San Francisco Chronicle newspaper.

³ UCLA Anderson Forecast “Modest Growth Coupled with High Unemployment Seen in National Economy,” dated December 9, 2009.

<http://www.uclaforecast.com/contents/archive/2009/media>

Writing about California, UCLA Anderson Senior Economist Jerry Nickelsburg predicts that the outlook for the rest of the year is little or no growth for the state. He writes, "The economy will begin to pick up slightly in the beginning of 2011, and by the middle of 2011, will begin to grow at more normal levels."

Nickelsburg believes that the keys to the California recovery are exports of manufactured and agricultural goods; a recovery in U.S.; increased public works construction, and increased investment in business equipment and software.

The expectation of the UCLA Anderson Forecast is that once growth returns in 2011, employment will begin to grow faster than the labor force and then unemployment rates will begin to fall. Though the economy will be growing in 2011, it will not be generating enough jobs to drive the unemployment rate below double digits until 2012.

Given all of these factors, we conclude that although we could recommend a reduction in hourly rates, we choose instead to apply the same rates, and adopt no COLA for 2010 intervenor work.

COLA Adjustments for 2010 and Resulting Rates

After reviewing the available data and based on the discussion above, we do not adopt any COLA adjustment for 2010. 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 2009-2010.

Hourly Intervenor Rate Ranges for 2006 - 2010

(2010 rates = 2009 rates)

Years of Experience	2006 Range	2007 Range	2008 Range	2009 Range	2010 Range
Attorneys:					
0 - 2	\$140 - \$195	\$145 - \$200	\$150 - \$205	\$150 - \$205	\$150 - \$205
3 - 4	\$ 190 - \$225	\$195 - \$230	\$200 - \$235	\$200 - \$235	\$200 - \$235
5 - 7	\$260 - \$280	\$270 - \$290	\$280 - \$300	\$280 - \$300	\$280 - \$300
8 - 12	\$280 - \$335	\$290 - \$345	\$300 - \$355	\$300 - \$355	\$300 - \$355
13+	\$280 - \$505	\$290 - \$520	\$300 - \$535	\$300 - \$535	\$300 - \$535
Experts:					
All	\$115 - \$370				
0 - 6		\$120 - \$180	\$125 - \$185	\$125 - \$185	\$125 - \$185
7 - 12		\$150 - \$260	\$155 - \$270	\$155 - \$270	\$155 - \$270
13+		\$150 - \$380	\$155 - \$390	\$155 - \$390	\$155 - \$390

D.07-01-009 and D.08-04-010 outlined the 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; and
- 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 Chief ALJ, in consultation with the Commission President, to prepare a proposed resolution recommending a COLA for work performed in 2011, and in subsequent years in the absence of a market analysis study, that considers the same factors used to compute the 2010 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.

FINDINGS

1. For work performed in 2010, 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 five years (2005-2010).
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 2011, 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 2010, intervenors are not authorized an hourly rate Cost Of Living Adjustment 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 2010, 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 Public Utilities Code Section 1806, the Chief Administrative Law Judge shall

designate staff from the Administrative Law Judge 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 Cost of Living Adjustment shall be authorized, by future Commission Resolution, for work performed in 2011, 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 Chief Administrative Law Judge, in consultation with the Commission President, shall prepare a proposed resolution recommending the 2011 Cost of Living Adjustment, and subsequent years if necessary, using the same factors used to compute the 2010 Cost of Living Adjustment, 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 Cost of Living Adjustment.

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 _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

APPENDIX A

**Comparison of Inflation Indexes
(Percent Increase from previous year)
2002-2010**

Year	SSA COLA ⁴	BLS CPI ⁵	BLS Wages ⁶	Intervenor Rate ⁷	CA Unemployment Rate ⁸	Commission Order ⁹
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%		Resolution ALJ-247

⁴ SSA COLA issued in prior year (i.e., 2010 COLA issued in October 2009). www.ssa.gov.

⁵ BLS average Consumer Price Index. www.bls.gov.

⁶ BLS average wage increase for legal profession in the Bay Area.

⁷ 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.

⁸ Employment Development Department CA unemployment rates November 2002-2009. www.edd.ca.gov.

⁹ Commission order authorizing intervenor rate increases.

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ- 247 to the electronic mail addresses on the attached service lists, as well as a Notice of Availability by U.S. mail. I have served a hard copy of the foregoing Draft Resolution ALJ-247 by U.S. mail on those persons on the attached service lists who do not have e-mail addresses.

Dated March 9, 2010, at San Francisco, California.

/s/ JOYCE TOM
Joyce Tom