

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-393
Administrative Law Judge Division
December 17, 2020

RESOLUTION

RESOLUTION ALJ-393. Adopting Intervenor Compensation Market Rate Study and Addressing Related Matters.

SUMMARY

This resolution adopts a new methodology for calculating Intervenor Compensation (ICOMP) rates as established in a Market Rate Study that defines comparable hourly rates for new labor categories and an annual escalation methodology. The new hourly rates, labor roles, and escalation methodology will apply starting with ICOMP work performed in the 2021 calendar year.

The new ICOMP compensation methodology adopted herein eliminates the need for the annual cost-of-living adjustment (COLA) by adopting a built-in escalation methodology and incorporates overhead costs into the new hourly rates. As a result, we will no longer compensate for costs such as: Lexis Nexis, postage, photocopies, telephone, etc. For certain proceedings, overhead costs may be considered on a case by case basis.

BACKGROUND

The Commission initially established its hourly rate ranges for intervenor compensation based on compensation data provided by the major utilities.¹ On August 19, 2004, in Resolution ALJ-184, the Commission adopted a procedure of calculating annual cost of living adjustments (COLAs) and using a resolution process to update hourly rates in compensation awards for intervenors. Resolution ALJ-184 established that individual intervenors could file claims for hourly rates based on their specific training and experience, taking into consideration the compensation of others with comparable training and experience.

¹ See Resolution ALJ-184.

In 2005, Decision (D.) 05-11-031 rejected a proposal to retain a consultant specializing in employee recruitment and compensation to complete a market rate study to identify strategies to better track and adjust hourly rates for the ICOMP program.² The Commission found that there was not adequate time to complete such a comprehensive study in time to set the new annual rate for 2006. However, the same decision found that a market rate study could be useful to better align ICOMP hourly rates with comparable compensation rates across the broader economy in the future.

Rulemaking (R.) 06-08-019 was established initially to set hourly rates for intervenor representatives for work performed in 2006. D.07-01-009, issued in January 2007, established guidelines for setting hourly rates for intervenor representatives with no recently authorized rates in place and determined that the Commission would continue updating intervenor hourly rates on an annual basis.

D.08-04-010, issued in April 2008, upheld the COLA calculation methodology, but discontinued the use of utility data sets for calculating the annual hourly rate updates, because the Commission was more reliant on publicly available cost of living data from several federal agencies.³ The Commission also determined that “exclusive reliance on COLAs could, over time, result in hourly rates for intervenors’ representatives that do not accurately track the ‘market rate’ for regulatory professionals.”⁴

Since then, the Commission has adopted a COLA increase annually except for the years 2009 - 2011 and 2015.⁵ Each COLA update was adopted after public review and comment.

On September 13, 2012, the Commission in Resolution ALJ-281 recognized the challenges of performing a comprehensive “market rate study” for regulatory services and focused instead on holding a public workshop to improve the process for annual adjustments to the existing hourly rate ranges.

In July 2013, California State Auditor conducted an audit to ensure awarded rates are applied in compliance with state law.⁶ While the auditor concluded that the Commission has generally awarded compensation to intervenors in accordance with state law, the audit report found that the Commission should conduct a comprehensive

² D.05-11-031 at 4-5.

³ D.08-04-010 at 16-17.

⁴ D.08-04-010 at 19.

⁵ The Commission declined to approve a COLA for the years 2009, 2010, 2011, and 2015 due to prevailing national and statewide economic factors. See Res. ALJ-235, Res. ALJ-247, Res. ALJ-267, and Res. ALJ-308. COLAs were approved for 2012 (See Res. ALJ-281), 2013 (See Res. ALJ-287), and 2014 (See Res. ALJ-303).

⁶ The audit report is available at: <http://www.bsa.ca.gov/reports/summary/2012-118>.

Market Rate Study to ensure intervenors' qualifications were properly verified, and the rates awarded to intervenors were reflective of comparable compensation rates and updated periodically. 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 report on the ICOMP program, among other topics. Following the December 2013 workshop, the Commission implemented several changes, including establishing a consistent methodology for developing annual COLAs and launching a comprehensive Market Rate Study to ensure intervenors are appropriately awarded compensation.

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

In 2018, the Commission contracted with Level4Ventures to evaluate the relationship between experience (labor roles) and compensation (hourly rates) for advocates and expert witnesses that work in the administrative law and regulatory sector within and outside of Commission proceedings, and determine reasonable advocate and expert witness fees for those that practice before the Commission.

In August 2018, Level4Ventures and the Commission hosted a public workshop to review and finalize the list of intervenor labor categories, descriptions of each separate labor category, and various experience levels. Level4Ventures incorporated comments and feedback provided during the workshop, when developing the Market Rate Study Final Report with new intervenor hourly rates.⁷

New Labor Role Categories

The Market Rate Study Final Report establishes new intervenor role classifications, a comprehensive description of each classification, and new rate ranges for each classification.

The study bases hourly rate ranges on the San Francisco Metropolitan Statistical area because most hearings take place at the Commission's current headquarters in San Francisco and a plurality of intervenors are headquartered or have offices in the same general location. The spreadsheet provides new hourly rate ranges for various occupational types – legal, experts, and advocates – based on an intervenor's level of experience ranging from entry level to senior personnel. Intervenors are directed to use the Hourly Rate Chart spreadsheet available on the Commission's ICOMP website

⁷ The ICOMP Market Rate Study Final Report is available at: www.cpuc.ca.gov/icomp

(www.cpuc.ca.gov/icomp) to determine the appropriate hourly rate when completing claims for work performed on or after January 1, 2021.

The spreadsheet's hourly rate ranges will be updated annually using the escalation methodology described below. The hourly rate ranges identified through the Market Rate Study also incorporate and reflect the annual escalation of overhead costs. As a result, we will no longer compensate for routine overhead costs such as Lexis Nexis fees, postage, photocopies, etc.

Incremental overhead costs for individual proceedings may be considered on a case by case basis.

Escalation Methodology

This resolution adopts the hourly rate ranges for 2021 and an annual escalation methodology. The Market Rate Study's rate ranges adopted for 2021 were calculated using a similar escalation methodology between 2010 and 2015 period, when the Commission declined to adopt a COLA during several years, as described in the Background section above. The ICOMP Market Rate Study Final Report is available at: www.cpuc.ca.gov/icomp.

The 2021 hourly compensation rate ranges in the Market Rate Study for different ICOMP labor roles are based on the approved escalation formula, regardless of when, or whether, the Commission previously approved a rate for an intervenor. Because the new 2021 rates are unrelated to 2020 and prior Commission approved rates, they may reflect an increase or decrease from an intervenor's previously approved rate. This will ensure the fair application of the Market Rate Study's new methodology to all those who make substantial contributions to Commission proceedings, starting with ICOMP work completed in 2021.

The approved annual escalation rate is based on the annual percentage change in the Bureau of Labor Statics Employment Cost Index. This annual escalation rate will be entered in the CPUC Intervenor Rates tool worksheet and the hourly rates for each separate labor role will be automatically adjusted, with the new annual rates effective on January 1 of each year. Rather than issuing a new COLA resolution each year, the annual escalation adjustment will be updated in the ICOMP Hourly Rate Chart spreadsheet on the Commission's ICOMP website⁸ and automatically applicable unless further action is taken by the Commission.

⁸ <https://www.cpuc.ca.gov/icomp/>

Individual intervenor representatives remain eligible to claim up to two five percent annual “step increases” within each labor role experience level, so long as their final requested rate does not exceed the maximum approved rate for that experience level.⁹

We expect that the adopted escalation methodology and base rates will be updated by the Commission every five years, to align the ICOMP hourly rates with fluctuations in observed market rates for comparable work by similarly trained individuals.

Implementation of New Hourly Rates

This resolution requires intervenors to submit, in their first claim seeking compensation for work completed in 2021 and beyond, updated labor roles and resumes pursuant to Section 1804(c). This shall be done in accordance with the current methodology for submitting a rate for a first-time intervenor:

- Parties must provide current resumes for each individual as a supporting document;
- Parties must include rate justification in the additional information section of the claim;
- Any claim filed after the adoption of the Resolution will automatically have the Market Rate Study’s methodology applied for work completed in 2021 and beyond.

If intervenors fail to provide the appropriate supporting documents, their claim may be denied or take longer to process.

The methodology adopted in this Resolution will be applied to any claim filed for work completed on or after January 1, 2021. Any claim filed for work completed on or before December 31, 2020 will be processed using previously approved ICOMP rates and/or hourly rates and the appropriate COLA adopted through the annual ICOMP resolution process.

For example, the COLA for 2020 was adopted on October 8, 2020 in Resolution ALJ-387. If a claim is for ICOMP work that occurred in 2020 and work in 2021, the intervenor should claim their 2020 approved rates and/or COLA approved in ALJ-387 for work completed in 2020, apply the new hourly rates for the work completed in 2021, and include the supporting documentation listed above.

Any claims filed after January 1, 2021, for an intervenor who does not have a previously approved rate should apply the ICOMP rates and/or COLA adopted for the years associated with the work completed. For example, if a new intervenor is seeking

⁹ The “step increases” methodology was adopted in D.07-01-009.

compensation for work completed in 2017-2019, its claimed rates should be based on the ICOMP hourly rate wages and COLAs adopted for those years.¹⁰ If it is seeking compensation for work conducted in 2021 and forward, it should use the Hourly Rate Chart adopted herein.

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 to the ICOMP service list on November 13, 2020.

The Commission received comments to the draft resolution filed by Environmental Defense Fund, The Utility Reform Network, Women's Energy Matters, Mussey Grade Road Alliance, Thomas Del Monte, and L.Jan Reid and reply comments filed by The Utility Reform Network and Mussey Grade Road Alliance. Intervenors did not object the new Intervenor Compensation Market Rate Study but made some recommendations.

The Commission notes the concerns of the intervenors but we will not create an additional level for the most experienced professionals with over 15 years experience. The Market Rate Study adequately describes how information was gathered, the escalation methodology application and its implementation and it also provides a range of rates of each labor role. The ICOMP Market Rate Study Final Report is available at: www.cpuc.ca.gov/icomp.

As always, the intervenors must identify where in the range they fall into and apply such rate. The Commission need not hold another workshop to discuss the Market Rate Study. The last workshop to discuss Methodology and Implementation of the Market Rate Study had a very low attendance rate, and for that reason, workshops will not be conducted.

We have modified the definition of labor roles for Legal Directors and Attorneys to include "licensing by any jurisdiction within the United States." We make no definition changes to scientific labor roles in order to allow these labor roles to accommodate changes in Intervenor needs over time.

¹⁰ The Commission's ICOMP website includes links to the annual hourly rate update resolutions: <https://www.cpuc.ca.gov/icomp/>.

FINDINGS

1. The Market Rate Study finalized by Level4Ventures provides comparable market-based compensation for labor categories that reflect the typical intervenor work before the Commission.
2. It is reasonable to apply the Market Rate Study's methodology to calculate wage rate ranges, labor roles, and the annual rate escalation for ICOMP work completed on or after January 1, 2021.
3. The rates established in the Market Rate Study incorporate overhead. It is therefore reasonable to no longer compensate for costs such as routine Lexis Nexis, postage, and photocopying fees.
4. Incremental overhead costs for individual intervenors may be considered on a case by case basis.
5. It is reasonable to apply previously authorized hourly intervenor compensation rates and the COLA adopted in Resolution ALJ-387 to work performed on or before December 31, 2020.
6. It is reasonable to allow individuals an annual "step increase" of five percent, twice within each labor role, capped at the maximum rate for that level, as authorized by D.07-01-009.
7. It is reasonable to restrict intervenor rates to the adopted range of rates for any defined labor role for each given year.
8. The Market Rate Study's escalation methodology is based on the annual changes in the Bureau of Labor Statistics Employment Cost Index.
9. It is reasonable to base the annual change in approved hourly intervenor compensation rates on prevailing federal employment cost statistics.
10. The rate levels and escalation procedures adopted through the Market Rate Study are consistent with the intervenor compensation statutes, Public Utilities Code §§1801-1812.
11. It is reasonable for the Commission to evaluate and update the labor roles and escalation methodology developed through the Market Rate Study every five years to align with any increases or decreases in market rates for comparable work.

