



# Intervenor Compensation Market Rate Study

## FINAL REPORT






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# 1 Intervenor Market Rate Study

This document presents the results of Level 4's intervenor market rate study and presents the proposed rates for formal adoption by the commission.

## 1.1 Background

As required by Public Utilities Code §1803 and §1806, Level 4 Press, Inc. (Level 4) was hired in May 2018 to analyze the relationship between experience and compensation for advocates and expert witnesses that work in the administrative law and regulatory sector, with an objective of determining reasonable advocate and expert witness fees for those that practice before the Commission. The commission has adopted a practice of annual modifications to approved compensation ranges based on an agreed upon escalation factor. This approach allows the approved compensation ranges to adjust annually in the time-period between market rate studies, with minimal cost and effort to the commission.

This deliverable represents task 8 under the Level 4 contract, during which Level 4 is asked to prepare a:

. . . Market Rate Study, including General Discussion Sections including discussions of [the] Rate Chart, Escalation Methodology, and Market Rate Study Criteria recommendations. The draft report shall discuss the reasoning for the recommendations. The Contractor shall engage the Commission at differing points of the process in order to ensure that the report satisfies Intervenor Compensation Program needs. The report shall provide justifications for its decisions and respond to criticisms made by outside stakeholders.

## 1.2 Approach

This section defines the approach used to create the final intervenor roles and to determine the market rate for each role.

### 1.2.1 Intervenor Role Definition

Current CPUC intervenor role definitions are broad, especially for experts. Because of the diverse requirements for support by intervenors, this results in extremely wide ranges for rates. These wide ranges mean that standard rate tables offer minimal value in the intervenor rate approval process, and each rate request must be independently analyzed. This both complicates the process and may result in inadvertent inequality in the treatment of rates, or rates that are above market rates for the actual individual involved.

Our approach was to increase the granularity of the intervenor roles, thereby supporting a narrower rate range for each role. At the same time we added roles based on

potential/desired participation by specific roles in the future, particularly in the area of schools. In total, the new structure includes seventy-nine unique intervenor roles. For each role we defined five levels (I-V) based on experience and education.

Role definitions were validated using a public workshop hosted by the CPUC, followed by a comment period. All public concerns raised during this period were resolved. The final role definitions were then distributed to intervenors and no additional concerns were raised.

Roles were categorized into one of the following categories:

- Advocate
- Expert
- Legal
- School

### **1.2.2 Intervenor Market Rate Determination**

A rate build-up approach was selected as most appropriate for this engagement. This is a standard technique used within government agencies for performing independent government cost estimates (IGCEs) of fair and reasonable market rates. The process, and our specific parameter settings are defined below.

The initial input for the rate build-up is the direct hourly salary for individuals with the requisite background skills, education, and experience level. This information is collected using salary surveys, review of published compensation reports, and review of government databases. The data is adjusted for geographic location through some combination of filtering and, where the resultant dataset is too small, applying metropolitan area based labor cost adjustment factors. The result is a bell curve showing both mean labor rate and the effective salary range. In our case the salary data was adjusted to the San Francisco metropolitan area.

The direct hourly salary is then multiplied by a fringe multiplier to account for social security, retirement, disability, healthcare, holidays, sick time, vacation, and bonuses<sup>1</sup>. This fringe multiplier is determined using salary surveys, published compensation reports, and government databases. The resultant fringe rate is specific to each labor role and to the level (I through V) within each labor role. The result is the fully loaded labor rate.

An overhead adjustment was then applied to account for overhead functions such as office rent, utilities, reception staff, etc. The overhead rates applied were based on published industry data, and they varied based on role category as follows:

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<sup>1</sup> Bonuses are included because these are often simply another form of compensation, especially with independent experts, and as such they have a direct impact on market rates charged by those individuals.

Table 1: Overhead by Labor Category

Category	Overhead
Advocate	23%
Expert	50%
Legal	48%
School	6%

A General and Administrative (G&A) multiple was then applied to allow for corporate support costs, including corporate officers and related administrative and management costs. These costs average 13% for all types of organizations providing labor support to government agencies, so this number was applied for all labor categories.

In reviewing intervenor payment data for the previous five years, it was apparent that there is often a significant time lag between the date that a service is provided (expense incurred) and the time that the intervenor organization can expect to be reimbursed. The cost of financing this gap in cashflow is termed Facility Cost of Money, or FCOM. A FCOM multiple of 5% was applied, approximately representing the cost of money with an average one-year reimbursement cycle.

The final adjusting variable for a rate build-up is the premium to be charged. This is determined by management within each organization, but the typical factors that go into the decision include:

- A risk premium due to potential risk factors associated with performing the work. Risk would include the risk of performing the work but then not being paid.
- An operational complexity adjustment based on the difficulty and complexity of obtaining the work (e.g., through proposals, contracts, and so on); finding and hiring the correct resources; and then managing the work to completion. So for example, follow-on work for an existing customer that involves simply placing a large number of existing employees on-site with the customer to work full-time for that customer largely under their direction would be the least operationally complex. Contracts that involve significant acquisition and contract effort; that require finding and hiring new resources; and that require managing starts and stops in staffing would be the most complex.
- The strategic value of the work. Work that is likely to result in long-term, low operationally complex work in an organization's core business area would have high strategic value. Work that is transactional; with little possibility of long-term follow-on work; and that is outside the organization's core business area would have low strategic value.
- Appropriate profit for the market. Note that while virtually all of the organizations advocating before the CPUC are non-profit organizations, the outside consultants that they hire will typically include profit in their rates. Also, the current mandate

to determine “market rates” implies that a reasonable and typical profit for the market in question must be included.

For the purpose of this study we reviewed the above factors as a knowledgeable, independent outside observer and determined that an appropriate premium for the intervenor work is 60%. We did not attempt to break out the various components of this number, but instead operated at the level of the total, bottom line for a reasonable market-rate premium adjustment.

When determining the final market rate, each of the indicated multiples would be added to 1 and then multiplied by the previously derived number. The final formula for determining the market rate for a given intervenor role is then:

$$\text{Equation 1: Market Rate Buildup}$$
$$\text{Market Rate} = \text{Direct Rate} * \text{Fringe Multiple} * \text{Overhead} * \text{G\&A} * \text{FCOM} * \text{Premium}$$

### 1.3 Results

The market rate charts were delivered as an Excel workbook. The data is accessed as follows. The primary screen used to lookup labor rates is shown in Figure 1. Fields in white are used for data entry. Other areas of the screen are display only and locked. The inputs are the labor category; the labor role; the level (I through V, with I being the least experienced); and the effective period. The tool displays the minimum education requirement, the necessary years of experience, a description of the labor role, and the market rate range. A standard educational equivalency matrix is also displayed, showing the number of years of experience that may be traded off toward a degree. Note that years of experience applied to meet degree requirements cannot also be counted toward years of experience.

The Labor Roles worksheet contains a comprehensive list of all of the intervenor roles and descriptive information for each role. The Rates worksheet contains a comprehensive list of all market rate data for each role. The escalation worksheet is used to escalate rates, as discussed in the next section.

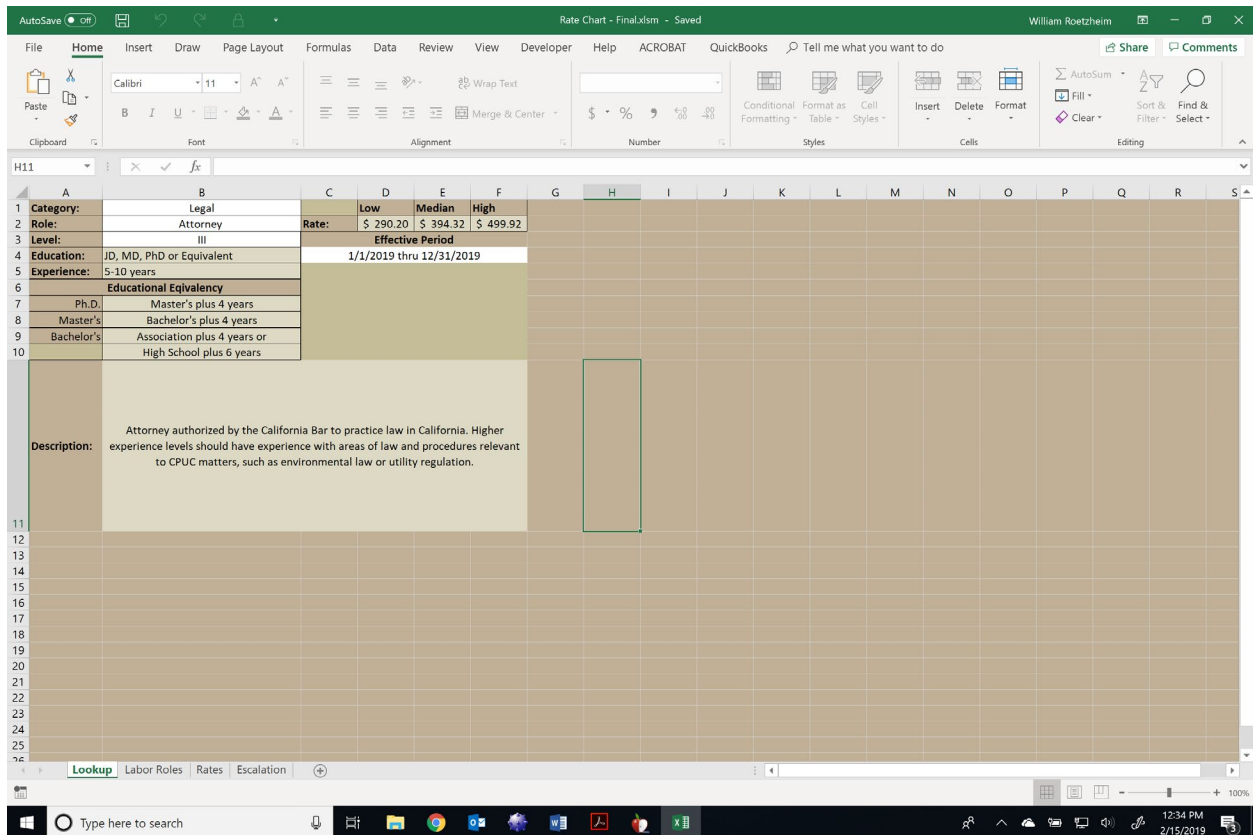


Figure 1: Labor Rate Lookup

## 1.4 Annual Escalation

The commission has been applying an annual escalation to intervenor rates since the previous market rate study, conducted in 2004. The annual escalation rates that have been applied are shown in Table 2. The current model, adopted in 2014 via Resolution ALJ-303, uses the formula shown in Equation 2 to calculate an escalation factor.



Table 2: Historic Rate Escalations

Formal Adoption	Year	Escalation
Resolution ALJ-184	2004	8.00%
D.05-11-031	2005	0.00%
D.07-01-009	2006	6.00%
D.08-04-010	2007	3.00%
Resolution ALJ-235	2008	0.00%
Resolution ALJ-247	2009	0.00%
Resolution ALJ-267	2010	0.00%
Resolution ALJ-281	2011	2.20%
Resolution ALJ-287	2012	2.00%
Resolution ALJ-303	2013	2.58%
Resolution ALJ-308	2014	0.00%
Resolution ALJ-329	2015	1.28%
Resolution ALJ-345	2016	2.14%
Resolution ALJ-352	2017	2.30%

$$Ef = \frac{\left(\frac{\% \Delta CPI_u + \% \Delta CPI_w}{2}\right) + \left(\frac{\% \Delta ECI_c + \% \Delta ECI_p + \% \Delta ECI_g}{3}\right)}{2}$$

Where:

*Ef* = Annual escalation factor.

*%ΔCPI<sub>u</sub>* = Annual percentage change in the consumer price index for urban consumers.

*%ΔCPI<sub>w</sub>* = Annual percentage change in the consumer price index for urban wage earners and clerical workers.

*%ΔECI<sub>c</sub>* = Annual percentage change in the Employment Cost Index for all civilian workers including private and government but excluding military.

*%ΔECI<sub>p</sub>* = Annual percentage change in the Employment Cost Index for all private workers (excludes government and military).

*%ΔECI<sub>g</sub>* = Annual percentage change in the Employment Cost Index for all government workers, excluding military.

Equation 2: Current Escalation Formula

The current CPUC escalation methodology appears to have an additional, informal rule that if the calculated increase is less than 0% (e.g., rates would go down), then rates are left unchanged.

#### 1.4.1 Recommended Escalation Approach

Public Utilities Code §1806 includes the following:

The computation of compensation awarded pursuant to Section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services.

The Consumer Price Index (both  $CPI_u$  and  $CPI_w$ ) measure the cost for consumers to purchase goods. As such they are a valid measure of inflation and the purchasing power of money, but they do not directly measure salaries or benefits, and therefore they are not an optimal measure of “the market rates paid to persons of comparable training and experience” as required by PUC §1806. We have therefore removed these metrics from the escalation methodology.

The Bureau of Labor Statistics does publish data that specifically measures the cost of labor salaries and benefits in the form of their quarterly Employment Cost Index (ECI). While labor costs are somewhat different conceptually from market rates, which must also include markups for overhead expenses and profits, they are sufficiently correlated with market rates to allow ECI to be a valid indicator of labor pricing changes over time. The ECI is the standard approach used by government agencies (e.g., the General Services Administration) for contractually allowed annual price adjustments to labor rates.

The ECI is published in thirteen tables. Tables 1 through 3 contain seasonally adjusted data. Tables 4 through 13 contain non-seasonally adjusted data. Because the tables will be used on an annual basis, seasonal adjustments are not necessary so one of the non-seasonally adjusted tables should be used.

Tables 4 through 7 contain data on combined wages and benefits. Tables 8 through 11 contain data on wages only and table 12 contains data on benefits only. Table 13 contains high level summary data broken down by major region in the U.S. Because market rate is driven by a combination of the cost of wages and benefits, Tables 4 through 7 are the more appropriate.

These tables contain the following data:

- Table 4: Civilian (private plus government but excluding military); by occupational group and industry.
- Table 5: Private industry (excludes government and military); by occupational group and industry.
- Table 6: Private industry; by bargaining status, census region and division, and metropolitan area status.
- Table 7: State and local government; by occupational group and industry.

California State government employees would be ineligible for intervenor compensation due to state law so this data is not relevant for our purposes. In reviewing intervenor compensation claims over the previous five years, we found few (if any) example of compensation claims from either Federal government employees or local government employees. Therefore, we conclude that the most directly applicable measure of market rates for comparable intervenor services would be Table 5, Private industry excluding government and military.

Of note, Table 5 is also the most common source of escalation data used for escalation on Federal government contracts.

Table 5 values are available for the total private industry workforce; or broken down by general occupational type; or broken down by industry and occupational group. Because the labor pool for intervenor compensation comparable market data would potentially include both of the broad occupational groups (goods producing and service providing), the breakdown by occupational type is the most appropriate portion of the data.

The most appropriate occupational type is, “Management, Professional, and Related,” which includes both attorneys and experts, and these two areas are not further broken out in the data. This category is further broken out to include a sub-category of data for this skill area excluding individuals that are paid based on incentives. Because the type of work required for intervenor services is not typically incentive based, this sub-category is the most appropriate. Accordingly, we recommend that annual escalation be based on:

*The annual percentage change in the Bureau of Labor statistics Employment Cost Index (ECI), Table 5, for the Occupational Group “Management, Professional, and Related excluding Incentive Paid Occupations.*

We have considered the situation of a falling wage rate (i.e., de-escalation), and we do not see any reason based on Public Utilities Code §1806 to assume that adjustments to market rate must always involve increases. Accordingly, we recommend that the rates be adjusted up *or down* based on the formula as stated.

Annual escalation is entered in the CPUC Intervenor Rate tool on the Escalation worksheet. As shown in Figure 2, the percentage escalation for the year is entered. All of the labor rates for that period are then automatically adjusted by applying that escalation percentage.

To:	Escalation
1/1/2019 thru 12/31/2019	0%
1/1/2020 thru 12/31/2020	0%
1/1/2021 thru 12/31/2021	0%
1/1/2022 thru 12/31/2022	0%
1/1/2023 thru 12/31/2023	0%

Figure 2: Annual Escalation Amount

## 1.5 Validation

The best source of relevant actual market data escalation we were able to find for validation purposes was the *United States Consumer Law Attorney Survey Report*, which is published every five years. This survey is the only such survey whose methodologies have been supported by the National Association of Legal Fee Analysis, a non-profit professional association for the legal fee analysis field. The Survey Report has been used in more than 35 jurisdictions, including state and federal courts, the U.S. Court of Federal Claims, the U.S. Department of Justice, the U.S. Department of Labor, and the American Arbitration Association to determine reasonable attorney fee rates<sup>2</sup>. The 2010/2011 median attorney hourly fee in California was \$412, while the 2015/2016 median attorney hourly fee in California was \$450, representing a 9% increase over five years. Table 3 shows a comparison of the rate escalation calculated using the current CPUC formula applied between 2010 and 2015 versus the escalation calculated using the proposed formula over that same time period. While the differences are not large, the proposed formula does more closely track observed market rate fluctuations over that same time period.

Table 4 shows the annual escalation percentages since 2004 as actually approved by the CPUC (using the current formula) and as calculated using the proposed formula applied to historic ECI data.

Table 3: Comparison of escalation methodologies

Actual market price escalation observed (per survey).	9.2%
Current CPUC formula escalation, 2010-2015.	6.9%
ECI Escalation using the proposed formula with historic ECI data, 2010-2015.	10.2%

Table 4: Current versus Proposed Formula

Year	Current CPUC Formula	Proposed CPUC Formula
2004	8.00%	4.57%
2005	0.00%	3.52%
2006	6.00%	2.99%
2007	3.00%	3.19%
2008	0.00%	3.09%
2009	0.00%	0.64%
2010	0.00%	2.08%
2011	2.20%	2.21%
2012	2.00%	1.82%
2013	2.58%	2.04%
2014	0.00%	2.08%
2015	1.28%	1.71%
2016	2.14%	1.76%
2017	2.30%	2.36%

<sup>2</sup> According to the survey authors.

Forecast market rates for attorneys were compared with survey billing rates for attorneys, and the results confirm that the market rate build-up approach did arrive at appropriate rates relative to observed billing practices.

We reviewed actual intervenor approved rates and expert resumes from CPUC cases over the previous five-years, and determined that the rates proposed in this study are reasonably aligned with rates claimed by intervenor organizations.

## **1.6 Recommendations**

- The CPUC should adopt the proposed rate tables for intervenor compensation reviews.
- The proposed escalation methodology should be applied on an annual basis, starting one year from now (the rates as delivered are current as of this date).
- The escalated rates should periodically be synchronized with actual market rates using the techniques outlined in this report. We recommend that this process occur every five years.
- During the market rate synchronization study the labor roles should be reviewed and updated as necessary to remain current with evolving CPUC needs (e.g., new expert categories).