



## California Public Utilities Commission

Despite Administrative Weaknesses, It Has Generally  
Awarded Compensation to Intervenors in Accordance  
With State Law

Report 2012-118

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July 23, 2013

2012-118

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the intervenor compensation program (program) administered by the California Public Utilities Commission (commission).

This report concludes that despite administrative weaknesses, the commission has generally awarded compensation to intervenors—individuals and groups that represent the interests of utility ratepayers—in accordance with state law. We found that the commission has a process in place to ensure that intervenors meet the necessary statutory requirements before it awards compensation for work conducted during regulatory proceedings. In addition, the commission has a robust process for determining whether the costs and expenses intervenors claim are reasonable, as state law requires. However, we determined that the commission only issued 6 percent of its intervenor compensation decisions during 2008 through 2012 within the 75-day deadline required by state law. The commission has also not issued guidance to its staff or utilities on how to calculate interest appropriately for intervenor claim decisions issued after the 75-day deadline. The lack of formal guidance has led the commission to employ a flawed interest computation methodology, resulting in miscalculations and, ultimately, overpayments of interest on awards. Of the \$42,000 in interest that the commission paid for the 10 largest interest payments we reviewed, we estimate that it overpaid \$40,000.

Further, we noted some areas in which the commission could do more to ensure that it appropriately compensates intervenors. Specifically, state law requires the commission to take into consideration the market rates paid to persons of comparable training and experience who offer similar services. However, the commission has acknowledged it has faced difficulties in fully complying with the requirement and that a comprehensive market rate study is necessary to ensure compliance with the law. In addition, we found that the commission lacks formal procedures to verify the qualifications of intervenors appearing in proceedings. Despite these weaknesses, we found that the program fulfills a fundamental part of its purpose, which is to encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process. We found that organizations participating in the program represented a broad array of interests, including environmental concerns, low-income and minority ratepayers, and ratepayers in a specific geographic region.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The California Public Utilities Commission (commission) is responsible for ensuring that California utility customers have safe, reliable utility service at reasonable rates, protecting utility customers from fraud, and promoting the health of California's economy. The commission's intervenor compensation program (program) is intended to ensure that intervenors—individuals and groups that represent the interests of utility ratepayers—have the financial resources to bring their concerns and interests to the commission at its proceedings. Intervenors advocate for a variety of ratepayers, including residential and small-business customers, minority groups, and the disabled. The commission awarded \$25.5 million from 2008 through 2012 for 337 claims intervenors submitted. The commission awarded the majority of that compensation to a relatively small group of intervenors: 10 intervenors received 84 percent of the amount awarded during that time.

We found that the commission has a process in place to ensure that intervenors meet the necessary statutory requirements before it awards them compensation for work conducted during regulatory proceedings. Moreover, administrative law judges and program analysts (commission staff) generally ensured that intervenors met those requirements before the commission issued awards in the 20 compensation decisions we reviewed from 2008 through 2012. Specifically, as the law requires, commission staff consistently determined whether intervenors had demonstrated significant financial hardship. They also established that intervenors were utility customers or represented customers. Finally, before the commission awarded compensation to the intervenors, commission staff verified that the intervenors had substantially contributed to the proceedings.

In addition, the commission has a robust process for determining whether the costs and expenses intervenors claim are reasonable, as state law requires. Specifically, the commission requires intervenors to submit detailed time logs and other documentation to support their requests for compensation for the hours their staff worked and for travel expenses and other costs. The commission uses a desk review process that adjusts claims for inefficient work and excessive hours spent on certain activities. In our review of 20 compensation decisions, we found that the commission staff responsible for those adjustments reduced awards for a number of reasons, including inappropriately high hourly rates, excessive staff hours claimed, and lack of substantial contribution to the proceeding.

### Audit Highlights . . .

*Our review of the California Public Utilities Commission's (commission) intervenor compensation program (program), revealed that the commission:*

- » *Generally ensured that intervenors—individuals and groups that represent the interests of utility ratepayers—met statutory requirements before it issued awards.*
- » *Requires and reviews detailed time logs and other documentation to support intervenors' requests for compensation and adjusts claims for inefficient work and excessive hours spent on certain activities.*
- » *Awarded only 6 percent of the claims submitted during 2008 through 2012 for intervenor compensation within the required 75-day time frame—it was more than six months late for 30 percent of the claims awarded during that period.*
- » *Does not have formal guidance on how to calculate interest appropriately for intervenor claim decisions issued after the 75-day deadline resulting in \$40,000 in estimated overpayments of interest on awards.*
- » *May be inappropriately compensating intervenors until it establishes market rates that comply with state law.*
- » *Lacks any formal procedures for verifying the qualifications of intervenors appearing in proceedings and did not have evidence that its analysts had verified qualifications in the past.*

However, the commission did not issue most decisions awarding intervenor compensation in a timely manner during 2008 through 2012. Our review revealed that the commission regularly exceeded the 75-day deadline that state law imposes for awarding intervenor compensation. We found that the commission awarded funds within that required time frame for only 20 (or 6 percent) of the claims submitted during our five-year audit period. In fact, 101 (or 30 percent) of the payment decisions that occurred during the period were awarded more than six months late. However, the commission has never conducted any analysis to determine what is leading to the delays. Although commission staff were able to provide some reasons for delays, they do not track submitted claims in sufficient detail to identify where in the process these delays are occurring. Further, the frequency of the delays might discourage some intervenors from participating in the program. In addition, we estimated that delays in awarding compensation for the 20 decisions we reviewed resulted in approximately \$34,000 in interest for those awards. Ratepayers ultimately paid this additional cost.

The commission has also not issued guidance to its staff or utilities on how to calculate interest appropriately for intervenor claim decisions issued after the 75-day deadline. Although the utilities typically calculate interest and pay it along with the awarded amount, the commission does so as well for a small subset of awards using funds from ratepayer fees that utilities collect statewide. The lack of formal guidance has led the commission to employ a flawed interest computation methodology, resulting in miscalculations and, ultimately, overpayments of interest on awards. For example, on one \$318,000 award, the accounting staff calculated \$22,100 in additional interest by incorrectly determining the daily rate at which interest accrued on the award, among other errors. However, if the accounting staff had correctly calculated the amount of daily accrued interest, we estimate that the commission would have paid only \$560. Commission records indicated that its accounting staff computed interest for 18 awards from March 2010 to May 2013, the period for which records were available. In reviewing \$42,000 that commission records indicated it paid for the 10 largest interest payments, we estimate that the commission overpaid \$40,000 in interest. If the commission had issued guidance to its accounting staff, these overpayments might have been prevented. Once we brought this issue to their attention, commission staff began developing guidance for internal use and for distribution to utilities.

In general the commission's compensation to intervenors has complied with state law for the 20 decisions we reviewed. However, we noted some areas in which the commission could do more to ensure that it appropriately compensates intervenors.

Specifically, state law requires the commission to take into consideration the market rates paid to persons of comparable training and experience who offer similar services. A 2012 commission resolution indicated that the commission historically considered each request for an hourly rate individually, one proceeding at a time, until it completed a market rate study in 2005 (2005 study). Since then, the commission used an annual update process to adjust the hourly market rates it awards to intervenors. However, the commission has acknowledged it has faced difficulties in fully complying with the requirement and indicated that a comprehensive market rate study is necessary to ensure compliance with the law. For example, the commission found that the 2005 study contained insufficient data to capture all of the possible market rate ranges. To address this issue, the commission plans to hold another public workshop to discuss the updating process for hourly rate ranges, benchmark studies, and cost-of-living adjustments for 2014 and later years. However, until the commission establishes market rates that comply with state law, it may be inappropriately compensating intervenors.

Moreover, although program analysts (analysts) claimed that they had informal procedures to verify the qualifications of intervenors appearing in proceedings, the commission lacks any formal procedures for doing so and was unable to demonstrate that its analysts had performed such verifications in the past. A former analyst stated that in 2010 she began to verify qualifications by checking the California State Bar Web site for the membership status of each attorney appearing before the commission for the first time. Current analysts stated that, as of January 2013, they also call previous employers of each attorney or expert to ensure that each intervenor staff member has the experience he or she claims when participating in a regulatory proceeding for the first time. However, no formal guidance or procedures instruct the analysts to verify such qualifications, and the analysts could not provide any documentation showing that they had performed such verifications on past claims. The intervenor compensation program coordinator stated that, as of June 2013, the commission was in the process of drafting procedures to address this issue. However until those new procedures are in place, future analysts could omit the verification process from their review of claims, resulting in overcompensation to intervenors who may have overstated their qualifications.

Finally, in our review of the 20 compensation decisions, we found that the program fulfills a fundamental part of its purpose despite some administrative weaknesses. The Legislature has declared its intent that the program be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process. A 1998 commission decision that made revisions to the

program acknowledged the importance of receiving input from a socioeconomically, culturally, and geographically diverse public, and that decision indicated that one purpose of the program was to reduce barriers to participation such customers sometimes face. In our review of the 15 regulatory proceedings represented in the 20 compensation decisions, we found that organizations participating in the program represented a broad array of interests, including environmental concerns, low-income and minority ratepayers, and ratepayers in a specific geographic region, and many of these requested compensation for their contributions.

### **Recommendations**

The commission should determine the cause of its lack of compliance with state law requiring it to issue award decisions within 75 days of the date an intervenor submits a compensation claim, and it should determine what actions to take to rectify the problem. The commission should ensure that it has sufficient information, such as detailed tracking information regarding claims, to identify where in the process delays are occurring. If the commission determines that the current 75-day statutory period is unreasonable, it should seek a change in state law.

To ensure that utilities and commission staff pay the correct amount of interest to intervenors, the commission should complete its effort to develop and distribute a methodology for calculating reasonable interest on award decisions issued after the 75-day deadline. The commission should follow the new procedure to ensure that it calculates interest payments appropriately. To the extent reasonable, the commission should recoup the interest overpaid to intervenors.

To comply fully with state law, the commission should conduct a comprehensive market rate study and update it periodically.

Commission staff should complete their effort to develop formal procedures to verify and document the qualifications of intervenors' attorneys and experts. The commission should implement the new procedures to ensure that it awards intervenors an appropriate hourly rate based on verified qualifications.

### **Agency Comments**

The commission agreed with our recommendations and outlined the steps it has taken or plans to take to implement them.

# Introduction

## Background

The California Public Utilities Commission (commission), which consists of five members appointed by the governor and approved by the Senate, is responsible for ensuring that California utility customers have safe, reliable utility service at reasonable rates, for protecting utility customers from fraud, and for promoting the health of California's economy. State law authorizes the commission to establish its own procedures for hearings and proceedings. The commission has broad constitutional and statutory powers to regulate investor-owned electric, natural gas, telecommunications, and water utilities, as well as railroad and passenger transportation companies.

The commission initiated its intervenor compensation program (program) in 1981, and state law was enacted to govern the program effective January 1985. According to the commission's program guide, the program is intended to ensure that intervenors—individuals and groups that represent the interests of utility ratepayers—have the financial resources to bring their concerns and interests to the commission at its proceedings. Intervenors advocate for a variety of ratepayers, including residential and small-business customers, minority groups, and the disabled. By hearing different perspectives, the commission is better able to make informed decisions that consider the impact of utility costs and services on all Californians. As shown in the text box, the program has several goals, such as encouraging participation of all groups that have a stake in the regulation process.

State law allows intervenors that participate in commission proceedings involving utilities, such as electric, gas, and water utilities, to request compensation for the costs associated with that participation. Public utilities generally pay these intervenor compensation awards from the amounts they collect from their ratepayers. These awards affect utility rates because state law requires the commission to adjust utility rates so that utilities can recoup any amounts they pay to intervenors. Typically, only a specific utility subject to the proceeding is responsible for paying the related intervenor compensation, and it subsequently increases its rate to cover the award amount. If a proceeding applies

### Goals and Intent of the Intervenor Compensation Program

- To encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process.
- To avoid unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented.
- To provide compensation to intervenors for reasonable advocate fees, reasonable expert witness fees, and other reasonable costs of participation in commission and related proceedings.
- To award compensation to eligible intervenors within a reasonable period after the intervenor has made a substantial contribution to a proceeding.

Source: California Public Utilities Code, sections 1801, 1801.3, and 1802.

to a utility category, such as all energy utilities, the commission pays the award with funds from ratepayer fees that utilities collect throughout the State.

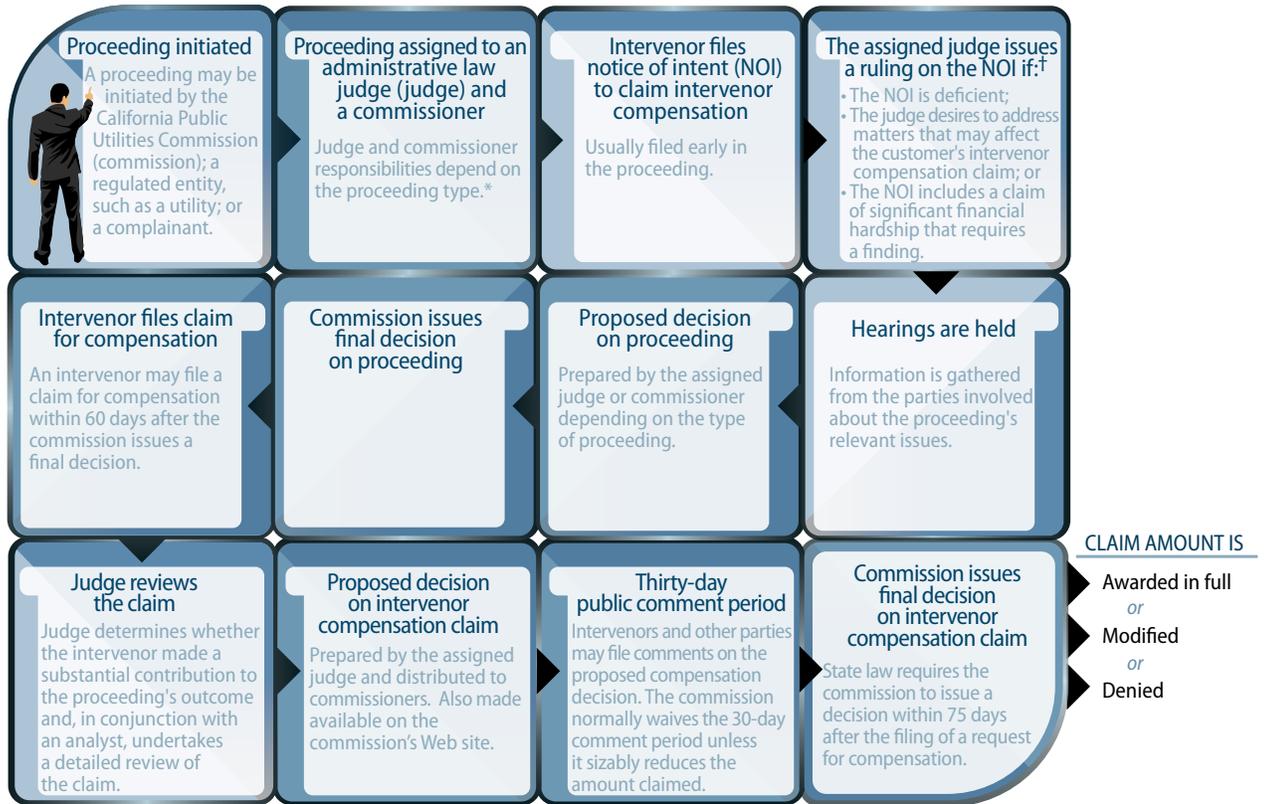
Commission compensation decisions suggest that intervenor participation in commission proceedings can substantially benefit ratepayers. For example, one compensation decision indicated that an intervenor's participation in a proceeding to set a utility's rates benefited ratepayers by an estimated \$354 million. The commission's compensation decision indicated that the intervenor raised more than 60 issues throughout the proceeding, and it awarded the intervenor \$784,000 for its work. In another case, the compensation decision stated that an intervenor's work on a different utility's rate-setting proceeding resulted in approximately \$130 million in savings to ratepayers, and the commission awarded the intervenor \$586,000 in compensation. This intervenor engaged with two consulting groups whose work resulted in expert findings that contributed to the recognized savings attributable to the intervenor.

### **The Program's Award Process**

As shown in Figure 1, an intervenor planning to claim intervenor compensation must get involved in the process early. The intervenor must file a notice of intent to claim compensation that indicates to the commission the planned extent and estimated costs of the intervenor's planned participation in a proceeding. In addition, to be eligible for compensation, the intervenor must show that it meets various mandates that state law imposes, as we discuss below. When the commission issues a final decision on a proceeding, the intervenor may file a claim for intervenor compensation within 60 days. Once the claim is filed, the commission is required to issue a compensation decision on it within 75 days.

State law requires that before being awarded compensation, intervenors must demonstrate that they made a substantial contribution to the commission proceeding. Specifically, each intervenor must substantially assist the commission in the making of its order or proceeding decision based on factual contentions, legal arguments, or policy recommendations. For instance, in one proceeding, the commission's compensation decision indicated that an intervenor submitted testimony from multiple witnesses on issues related to the utility's electric and gas distribution and electric generation functions. In addition, the intervenor brought up additional issues when it cross-examined the utility's witnesses during evidentiary hearings. After the conclusion of the evidentiary hearings, the intervenor worked with other intervenors in the proceeding to achieve a settlement on a number of issues that the commission generally adopted.

**Figure 1**  
**Major Components of the Intervenor Compensation Award Process**



Sources: Commission staff and documents and California Public Utilities Code, sections 1801 through 1812.

\* Proceeding types include adjudicatory proceedings (typically policy or rule enforcement), rate-setting proceedings (generally policy interpretation or proceedings setting rates), and quasi-legislative proceedings (generally policy development).

† If the assigned judge does not issue a ruling on the intervenor's NOI, the process continues to the hearing phase.

However, the commission does not have to adopt an intervenor's position to find that the intervenor made a substantial contribution to a proceeding. For instance, in one intervenor compensation decision, the commission stated that although it rejected the intervenor's argument on an issue, the intervenor contributed to the issue by providing a unique point of view that enriched the commission's deliberations. The commission also did not adopt that intervenor's recommendation on another issue in the same proceeding, but the commission stated that the intervenor provided relevant arguments and that its recommendations represented a legitimate approach and contributed to the commission's consideration of the issue.

In addition, state law requires that the intervenor must show "significant financial hardship" to receive compensation, by submitting documents demonstrating either that the intervenor

could not afford to participate without undue hardship or—in the case of a group or an organization—that the economic interest of the individual members is small in comparison to the cost of effective participation in the proceeding. In the latter instance, this allows intervenors to represent different groups of customers that would not find it economically advantageous to represent themselves individually when compared to the cost of participating in the process. In addition to demonstrating significant financial hardship, the intervenor must meet other mandates, such as submitting documents within a prescribed time frame.

The program is currently managed by an assistant chief administrative law judge (assistant chief judge), who also acts as the intervenor compensation program coordinator (program coordinator). The program coordinator, who directed two program analysts (analysts) at the time of our review, is responsible for the proper distribution of claims-related work to these analysts, who review the claims and, in collaboration with the assigned administrative law judge (judge), draft proposed decisions on compensation awards. The chief administrative law judge, an assistant chief judge, and the assigned commissioner then review the proposed decision prior to it being brought before the commission for consideration.

Intervenors can challenge the commission's compensation decisions. When the commission proposes a sizable reduction in the amount of intervenor compensation requested, an intervenor has an opportunity to make comments on the proposed decision for the commission to consider before it issues its final award. After the commission has issued a final compensation decision, an intervenor can petition the commission for a modification to that award to correct a factual error. If the intervenor believes the commission made a legal error in the decision, the intervenor can file a request for a rehearing. The purpose of an application for a rehearing is to alert the commission to a legal error, so that the commission may correct it. Following the rehearing, or if the commission denies an application for a rehearing, the intervenor may petition for a writ of review in the court of appeal or the California Supreme Court.

As shown in Table 1, the commission awarded \$25.5 million during the five-year period from 2008 through 2012 for 337 claims intervenors submitted. The commission denied six claims in full, and it awarded less than the amount claimed 80 percent of the time, representing a \$4.9 million reduction of the total amount claimed.

**Table 1**  
**Intervenor Compensation Claim Decisions Made by the California Public Utilities Commission**  
**2008 Through 2012**

|                 | CLAIM DECISIONS MADE | PERCENTAGE OF TOTAL DECISIONS | AMOUNT CLAIMED (IN MILLIONS) | AMOUNT AWARDED (IN MILLIONS) | PERCENTAGE OF TOTAL AMOUNT AWARDED |
|-----------------|----------------------|-------------------------------|------------------------------|------------------------------|------------------------------------|
| Awarded in full | 62                   | 18%                           | \$2.0                        | \$2.0                        | 8%                                 |
| Denied          | 6                    | 2                             | 0.3                          | 0.0                          | 0                                  |
| Modified*       | 269                  | 80                            | 28.1                         | 23.5                         | 92                                 |
| <b>Totals</b>   | <b>337</b>           | <b>100%</b>                   | <b>\$30.4</b>                | <b>\$25.5</b>                | <b>100%</b>                        |

Source: California Public Utilities Commission (commission) intervenor compensation program decisions.

\* All modified awards were for less than the amount claimed by intervenors in their compensation requests, unless the commission corrected for mathematical errors after the claim was submitted.

The commission awarded the majority of that compensation to a relatively small group of intervenors. As shown in Table 2 on the following page, 10 intervenors accounted for 84 percent of the amount awarded in the last five years. For more information about those 10 intervenors, see the Appendix.

### The Role of the Division of Ratepayer Advocates

The role of the Division of Ratepayer Advocates (division) is similar to that of intervenors in that the division represents ratepayers in commission regulatory proceedings. According to state law, the division is tasked with representing and advocating on behalf of the interests of public utility customers and subscribers. Although the division is part of the commission, state law provides that the director of the division be appointed by, and serve at the pleasure of, the governor. The statutory goal of the division is to obtain the lowest possible rate for service consistent with reliable and safe service levels. According to its 2012 annual report, the division has 137 authorized staff positions. Further, the report states the division was involved in 176 energy, water, and communications proceedings in 2012.

The division has no role in awarding compensation to intervenors. However, the commission does require intervenors to provide in their claims an explanation of how they coordinated with other parties, including the division, to avoid duplicating work in a proceeding. The acting division director stated that the division and intervenors coordinate on a case-by-case basis. He also stated that intervenor compensation is a commission process and the division has not challenged or reviewed claims, although it does review every document submitted during a proceeding. The acting division director further acknowledged that intervenors complement the

**Table 2**  
**Intervenor Claims Awarded as a Percentage of Claims Submitted for the 10 Intervenor With the Largest Cumulative Awards**  
**2008 Through 2012**  
**(Dollars in Thousands)**

| INTERVENOR   | NUMBER OF AWARDS | AMOUNT CLAIMED  | AMOUNT AWARDED  | PERCENTAGE AWARDED OF AMOUNT CLAIMED |
|--|------------------|-----------------|-----------------|--------------------------------------|
| The Utility Reform Network                           | 124              | \$13,439        | \$12,690        | 94%                                  |
| Utility Consumers' Action Network                    | 22               | 3,416           | 2,964           | 87                                   |
| Disability Rights Advocates                          | 21               | 1,624           | 1,341           | 83                                   |
| Aglet Consumer Alliance                              | 24               | 1,009           | 910             | 90                                   |
| The Greenlining Institute                            | 16               | 1,495           | 729             | 49                                   |
| Center for Biological Diversity                      | 2                | 838             | 726             | 87                                   |
| Consumer Federation of California                    | 12               | 826             | 637             | 77                                   |
| Green Power Institute                                | 8                | 551             | 502             | 91                                   |
| Rancho Peñasquitos Concerned Citizens                | 1                | 473             | 461             | 97                                   |
| Natural Resources Defense Council                    | 13               | 493             | 392             | 80                                   |
| <b>Totals for the 10 intervenors</b>                 | <b>243</b>       | <b>\$24,164</b> | <b>\$21,352</b> | <b>88%</b>                           |
| <b>Total as a percentage of total amount awarded</b> |                  |                 | <b>84%</b>      |                                      |
| <b>Totals for other intervenors</b>                  | <b>100</b>       | <b>\$6,225</b>  | <b>\$4,142</b>  | <b>67%</b>                           |
| <b>Total as a percentage of total amount awarded</b> |                  |                 | <b>16%</b>      |                                      |
| <b>Totals for all intervenors</b>                    | <b>343*</b>      | <b>\$30,389</b> | <b>\$25,494</b> | <b>84%</b>                           |

Source: California Public Utilities Commission (commission) intervenor compensation program decisions.

\* Some awards are counted more than once when at least one of the 10 intervenors jointly filed a claim with another intervenor and the commission granted a joint award. The dollar amounts claimed and awarded for these joint claims have been allocated to the proper intervenors and are not overcounted.

division's role by providing added expertise or bringing a unique perspective to proceedings in which intervenors participate. He stated that the division and intervenors may differ on how much emphasis the commission should place on an issue, or intervenors may address an issue that the division does not address.

### Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to perform an audit of the program, including its processes to ensure that intervenor claims are accurate and comply with state law, and whether the commission's procedures are effective in preventing the commission and intervenors from performing duplicate work. The analysis the audit committee approved contained seven separate objectives. We list the objectives and the methods we used to address them in Table 3.

**Table 3**  
**Audit Objectives and the Methods Used to Address Them**

| AUDIT OBJECTIVE  | METHOD  |
|--|---|
| 1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.  | <ul style="list-style-type: none"> <li>• Reviewed relevant sections of the California Public Utilities Code and other laws and regulations.</li> <li>• Reviewed various California Public Utilities Commission (commission) decisions and resolutions that affected the program.</li> </ul>   |
| 2 Determine the number and dollar value of all compensation claims filed by intervenors and the resulting awards made over the past five years. Choose a selection of claims and awards and assess whether they complied with legal requirements, including related commission decisions, rules and orders, and procedural requirements. | <ul style="list-style-type: none"> <li>• Reviewed all 337 awards the commission made from January 1, 2008, to December 31, 2012 (the five-year audit period), to determine whether all awards during that period were present in the intervenor compensation program database (database). When we determined that the database contained errors, we concluded that its contents as provided to us were not sufficiently reliable for our use and that some uses of the data could lead to incorrect or unintentional messages. We created a summary of key information related to the awards by obtaining correct data from the commission's collection of compensation decisions and claim requests. Thus, although we note the limitations of the original database as it was provided to us, our analysis relies only on correct values as issued in official documents.</li> <li>• Determined the total amount awarded to all intervenors during the five-year audit period.</li> <li>• Determined the total number of claims submitted, fully awarded, denied, and modified during the five-year audit period.</li> <li>• Reviewed compensation decisions and claims related to 20 awards—four from each year of the five-year audit period—and determined whether each met the requirements articulated in state law and commission decisions. To select the awards we reviewed, we judgmentally selected three awards per year from the 10 intervenors identified in Objective 4 to ensure that we reviewed at least one award for each of these intervenors. We also judgmentally selected one award per year from the remaining intervenors. We selected at least one award from each of three major areas the commission regulates—energy, telecommunications, and water. Finally, we ensured that we selected awards authored by a variety of administrative law judges.</li> <li>• Interviewed commission staff to determine how they reviewed intervenor claims. We interviewed two former program coordinators because the current coordinator has only been in his position since March 2013.</li> </ul> |
| 3 Evaluate the commission's processes for auditing intervenor claims for compensation, including the claimants' financial controls to ensure claims are accurate and comply with state law.  | <ul style="list-style-type: none"> <li>• Interviewed commission staff to determine why they do not perform field audits of intervenor claims.</li> <li>• Reviewed the desk review process commission staff use when making compensation decisions.</li> <li>• Determined what guidance the commission offers to assist intervenors seeking an award for compensation.</li> </ul>  |
| 4 Identify the 10 intervenors with the largest cumulative compensation claims that were paid over the past five years. For those 10 intervenors:   | Determined the 10 intervenors that had the largest cumulative awards in our five-year audit period.   |
| a. Determine the ratio of the total amount of claims paid to the total amount of the intervenor claims submitted for payment.  | <ul style="list-style-type: none"> <li>• Used the summary we prepared in Objective 2 to determine claims submitted and awarded for each of the 10 intervenors and calculated the resulting ratios.</li> <li>• Determined what caused some of the year-to-year variances in cumulative awards we found, such as the significantly higher compensation awarded during 2009.</li> </ul>  |
| b. Evaluate whether the commission's audits appropriately determined whether claimants' financial, accounting, and other records support the claims for intervenor payments, including verification that the claimant met the criteria related to eligibility and "significant hardship," in compliance with state law.                  | <ul style="list-style-type: none"> <li>• Examined 20 awards selected as part of Objective 2 and determined whether commission staff conducted their desk reviews in a complete and consistent manner.</li> <li>• Determined whether the commission ensured that the intervenors met the statutory requirements to be eligible for compensation.</li> </ul>  |

*continued on next page...*

| AUDIT OBJECTIVE   | METHOD  |
|---|---|
| c. Determine whether the commission's audits of claims submitted by the intervenors have resulted in findings and corrective actions with regard to those claims.   | Reviewed the 20 awards selected as part of Objective 2 to determine what type of adjustments the commission typically made before awarding compensation.  |
| d. To the extent possible, determine whether intervenors received payment from other sources for their participation in proceedings for which claims were made.   | <ul style="list-style-type: none"> <li>• Interviewed the 10 intervenors to inquire whether any had received funds from outside entities for work done during a regulatory proceeding for which they also received compensation from the commission.</li> <li>• Reviewed any documentation we requested and intervenors provided to support their assertions.</li> <li>• Because intervenors are private organizations, we have statutory authority to examine their records only to the extent that the commission may, which is limited to records supporting the compensation claim. Thus, we relied only on the steps above to draw our conclusions for this objective.</li> </ul>   |
| e. To the extent possible, determine the percentage of each intervenor's annual revenues attributable to payments made under the intervenor program.  | <ul style="list-style-type: none"> <li>• Interviewed the 10 intervenors and obtained audited financial statements and other financial documents to determine what percentage of their annual revenue was attributable to awards from the intervenor program.</li> <li>• Calculated the percentage of each intervenor's annual revenues attributable to compensation from the commission and confirmed our results with each intervenor.</li> </ul>  |
| f. Determine whether the commission required background checks on intervenors—including criminal, performance, and qualification checks—and, if so, how the commission took that information into consideration in approving claims for compensation.   | <ul style="list-style-type: none"> <li>• State law does not require background or criminal checks of intervenors, and the commission does not conduct such checks.</li> <li>• Interviewed commission staff to learn whether they check the qualifications of intervenor staff and reviewed the claims selected in Objective 2 to determine whether intervenors submitted information to substantiate their staff's qualifications.</li> </ul>   |
| g. Evaluate what, if any, financial and other public disclosures the intervenors made relating to actual or perceived conflicts of interest that may have existed as a result of the intervenors' participation in commission proceedings on behalf of customers. Determine what, if any, consideration the commission gave those conflicts in awarding claims. | <ul style="list-style-type: none"> <li>• Interviewed the 10 intervenors to ask whether they made a public disclosure related to a conflict of interest.</li> <li>• Interviewed commission staff to determine whether they complied with state law by ensuring that intervenors did not have a conflict of interest before being compensated for work in proceedings where they represented small commercial businesses receiving bundled electric services.</li> <li>• Reviewed five proceedings from the 20 awards selected as part of Objective 2 to determine whether intervenors had ever publicly disclosed any conflicts of interest.</li> <li>• Reviewed other conflict-of-interest laws and determined that they did not pertain to intervenors.</li> </ul> |
| h. Determine whether the Division of Ratepayer Advocates within the commission has challenged or questioned a claim made by an intervenor.  | Documented the Division of Ratepayer Advocates' statutory responsibilities within the regulatory process and interviewed division staff.  |
| 5 Determine whether the commission has procedures to ensure that intervenors and commission staff do not perform duplicate work. In addition, determine whether such procedures have been effective in preventing overlap between the commission and intervenors.   | <ul style="list-style-type: none"> <li>• Used the 20 awards selected as part of Objective 2 to determine if the commission considered whether each intervenor avoided duplicating work with the Division of Ratepayer Advocates, or another intervenor, before paying compensation.</li> <li>• For the 20 awards in our selection, we reviewed documentation to determine whether intervenors demonstrated they had coordinated with other parties, including the Division of Ratepayer Advocates.</li> </ul>   |
| 6 Determine whether the intervenor program is fulfilling its intended purpose.  | <ul style="list-style-type: none"> <li>• Reviewed the 20 awards selected in Objective 2 to determine how many intervenors participated in the corresponding regulatory proceedings, whether the intervenors submitted claims for compensation, and which group of ratepayers those intervenors represented, to the extent possible.</li> <li>• Interviewed commission staff regarding how it measures whether the program is fulfilling its intended purpose.</li> </ul>  |

|   | AUDIT OBJECTIVE   | METHOD   |
|---|---|--|
| 7 | Review and assess any other issues that are significant to the commission's intervenor program. | <ul style="list-style-type: none"> <li>• Reviewed the results of the 2005 market rate survey and subsequent rate-related commission resolutions to assess how the commission determined hourly rates for intervenor staff during our audit period.</li> <li>• Obtained the commission's perspective regarding the sufficiency of the existing market rate study.</li> <li>• Interviewed commission staff regarding their progress on updating the hourly rate tables and preparing a new study.</li> <li>• Documented some examples of the impact intervenors had on proceedings.</li> </ul> |

Sources: California State Auditor's analysis of Joint Legislative Audit Committee audit request number 2012-118, planning documents, and analysis of information and documentation identified in the column titled *Method*.

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## Audit Results

### The Commission Has a Robust Process for Reviewing Compensation Claims

The California Public Utilities Commission (commission) has a process in place to ensure that intervenors meet statutory requirements before it awards them compensation for work the intervenors conduct during regulatory proceedings. In addition to ensuring compliance with statutory mandates, the commission has a robust process for determining whether the costs and expenses the intervenors claim are reasonable. In fact, we found that the administrative law judges and program analysts (commission staff) who prepare the decisions used this process to consistently reduce award amounts for several reasons, such as if the intervenor requested compensation for hours that the commission staff considered excessive.

#### *The Commission's Review Generally Ensured That Intervenors' Compensation Claims Complied With State Law*

The commission's desk review process generally ensured that intervenor claims met statutory requirements and included appropriate supporting documentation to substantiate the hours and costs the intervenors claimed. The commission's desk review process focuses on verifying this information. Commission staff have created templates that intervenors can use when submitting their claims; these standardized forms have sections that incorporate all of the elements in state law necessary to demonstrate eligibility for compensation. In addition, submitted claims that did not use the standardized forms still are required to address the statutory elements. Requests for intervenor compensation are assigned to commission staff, who prepare draft decisions recommending whether to grant compensation to a particular intervenor. The commission subsequently issues a final compensation decision.

For example, commission staff consistently verified that intervenors complied with state law requiring them to demonstrate significant financial hardship before the commission awards compensation. As shown in the text box, this requirement mandates that the intervenors demonstrate they cannot afford to pay the costs of effective participation without undue hardship or, in the case of an organization, that the economic interest of the individual

#### **Intervenors Must Demonstrate Significant Financial Hardship to Be Eligible for Compensation**

Significant financial hardship is met in one of two ways, which is dependent on the type of customer:

1. **Undue Hardship Test**—The customer cannot, without undue hardship, afford to pay the costs of effective participation and must provide financial information demonstrating the undue hardship.
2. **Comparison Test**—The economic interests of the individual members of the organization are small in comparison to the costs of effective participation in the proceeding.

Sources: California Public Utilities Code, Section 1802, and the California Public Utilities Commission's Intervenor Compensation Program Guide.

members of the organization is small in comparison to the costs of effective participation in the proceeding. For example, in 2010, an intervenor representing residential ratepayers claimed that an average residential utility bill would be significantly less than the approximately \$150,000 the intervenor expected to expend participating in that proceeding. Based on this argument, the commission found that the intervenor had successfully demonstrated significant financial hardship. For claims related to 19 of the 20 compensation decisions we reviewed for the five-year period, intervenors asserted that the cost of participation in the proceedings was greater than the economic interests of the individuals they represented. In the one remaining instance, the intervenor submitted some personal financial information to demonstrate that he could not afford to participate without undue hardship. In all 20 compensation decisions we reviewed, commission staff verified whether the intervenors demonstrated significant financial hardship. Although we observed that this requirement was not difficult for intervenors to meet, according to one former intervenor compensation program coordinator (program coordinator), the commission has set the bar low for demonstrating this requirement in order to encourage the participation of intervenors advocating for underrepresented interests.

### Intervenors Must Demonstrate Their Customer Status to Be Eligible for Compensation

Customer status eligibility is met in one of three ways:

1. **Category 1**—An actual customer whose self-interest in the proceeding arises primarily from his or her role as a customer of the utility. The customer must also represent the broader interests of at least some other customers.
2. **Category 2**—A representative who has been authorized by actual customers to represent them. This involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customers' views in a proceeding.
3. **Category 3**—A formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers or small commercial electric customers.

Sources: California Public Utilities Code, Section 1802, and the California Public Utilities Commission's Intervenor Compensation Program Guide.

Commission staff also checked to ensure that intervenors complied with a provision in state law requiring them to prove their status as a utility customer or as a representative of utility customers before being awarded compensation. As shown in the text box, customer status is met when an intervenor is a customer of the utility appearing before the commission in a regulatory proceeding, when it enters into a more formal arrangement to represent an actual group of customers, or when it is an organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. For example, in one proceeding we reviewed, an intervenor indicated that it met the definition of customer because its bylaws authorize it to represent and advocate for the interests of certain customers of electric utilities concerned about the impacts on the public of new overhead transmission lines. In 19 of the 20 claims we reviewed, the intervenor indicated that it was an organization representing the interests of residential customers or small commercial electric customers. A former program coordinator stated that, as with the significant

financial hardship determination, the bar for satisfying this statutory requirement is low in order to encourage intervenors to participate in proceedings.

For one of the 20 claims, the commission denied all compensation to an intervenor when it was determined that the intervenor did not meet the customer status requirement. State law requires the assigned administrative law judge (judge) to issue within 30 days a preliminary ruling on the intervenor’s eligibility to claim compensation if the intervenor submits a document, usually early in the proceeding, that includes its demonstration of significant financial hardship.<sup>1</sup> Although in this instance the intervenor did submit such a document to the judge, the commission failed to make a ruling on the intervenor’s eligibility until after the proceeding had concluded and the intervenor had submitted its claim for more than \$45,000. Thus, the intervenor participated in a proceeding without knowing that it was ineligible to receive compensation. Additionally, the commission failed to issue preliminary rulings in two other instances in which these rulings were required. However, in those instances, the commission found later, during its claim reviews, that the intervenors did meet the necessary eligibility requirements. Nevertheless, when it does not issue preliminary rulings as required, the commission risks allowing intervenors to participate in proceedings without knowing whether they are eligible for compensation. After we brought this matter to their attention, commission staff began developing a tracking process to help ensure that preliminary rulings are issued in a timely manner when required.

In addition to significant financial hardship and customer status determinations, the commission also ensured that the claims we reviewed included information about how the intervenors substantially contributed to the proceeding, as described in the text box. The commission requires the intervenor to provide an explanation and specifically identify its substantial contribution to a commission proceeding decision before the commission grants a compensation award. The intervenor is required to support each of its claimed contributions by citing the specific portions of the intervenor’s documents produced in the proceeding or transcript reflecting the intervenor’s testimony, as well as citing the specific portion of the commission’s order or

**Intervenors Must Demonstrate Their Substantial Contribution to Be Eligible for Compensation**

- The intervenor’s presentation has substantially assisted the commission in the making of its order or proceeding decision because the order or proceeding decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.
- This can be met by the participation of an intervenor that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, if the participation makes a substantial contribution to a commission order or proceeding decision.

Sources: California Public Utilities Code, sections 1802 and 1802.5, and the California Public Utilities Commission’s Intervenor Compensation Program Guide.

<sup>1</sup> In addition to requiring that the ruling address significant financial hardship, state law authorizes judges to issue a ruling on other matters included in the document that may affect the ultimate claim for compensation, such as the intervenor’s customer status.

proceeding decision indicating that the commission adopted in whole or in part the intervenor's contentions or recommendations. Commission staff then verify the statements and document references the intervenor provides. For example, the commission stated in one compensation decision that the intervenor provided some direct substantial contributions to the proceeding decision, where the commission adopted the intervenor's position or where the intervenor contributed by offering alternative views for its consideration, leading to the proceeding decision.

Our review of claims also found that commission staff generally verified that intervenors took steps to avoid duplicating efforts by coordinating with other parties during a regulatory proceeding. The Legislature declared its intent that the commission administer the program in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented. The commission requires the intervenor to provide in its claim an explanation of how it coordinated efforts with other parties to avoid duplication or how their participation supplemented, complemented, or contributed to that of another party. Intervenors can explain how they sought to avoid duplication by demonstrating working agreements among parties involved in the proceeding, such as sharing expert witnesses and filing joint documents. We found that commission staff generally took steps to verify that this had occurred by reviewing the claim's supporting documentation and comparing the substantial contribution of the intervenor to the substantial contributions of the other parties involved in the proceeding.

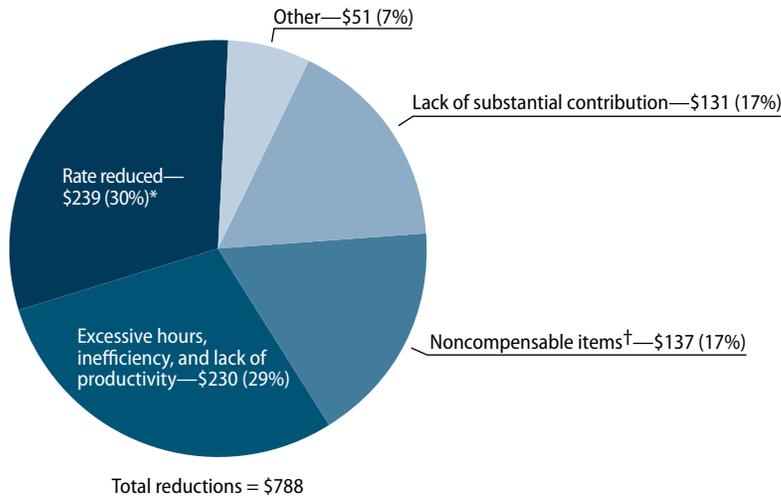
### ***The Commission Regularly Reduced Awards for Compensation***

In addition to ensuring that intervenors demonstrate that they have met the statutory requirements previously discussed, the commission staff must also ensure that intervenors claimed reasonable expenses that are commensurate with the extent of their contribution. State law requires the commission to award reasonable fees and costs for intervenors participating in regulatory proceedings. To comply, the commission requires intervenors to submit detailed time logs and other documentation to support their requests for compensation for not only the hours their staff members worked, but also the travel expenses and other costs related to their participation in a given commission proceeding. These time logs typically include descriptions of specific tasks, issues in the proceeding that the tasks addressed, and the amount of time spent on each task. Commission staff review each intervenor's claim, including attached time logs, receipts, and invoices, to eliminate any costs that are unreasonable or are ineligible for compensation.

***The commission requires intervenors to submit detailed time logs and other documentation to support their requests for compensation for not only the hours their staff members worked, but also the travel expenses and other costs related to their participation in a given commission proceeding.***

In our review of the 20 compensation decisions and their accompanying claims, we found that the commission staff responsible for those adjustments consistently reduced awards for a number of reasons, including inappropriately high hourly rates, excessive hours claimed, and lack of substantial contribution. As we show in Figure 2, commission staff reduced intervenors' awards by \$788,000, or 13 percent of the total amount requested in those claims. For example, commission staff reduced awards by \$230,000 for excessive hours claimed, inefficiency, and a lack of productivity. Further, they reduced awards by \$239,000 for the unreasonableness of hourly rates intervenor staff claimed. In one instance, commission staff reduced an award by more than \$65,000 after reducing the hourly rates of three attorneys because they had not demonstrated sufficient experience to justify the requested rates. Other reasons for compensation reductions included lack of substantial contribution and noncompensable items, such as clerical work, meals, and routine travel costs.

**Figure 2**  
**Reductions Made to 20 Intervenor Compensation Awards**  
 (Dollars in Thousands)



Source: California State Auditor's analysis of California Public Utilities Commission intervenor compensation program decisions.

Notes: For the 20 claims we reviewed, intervenors requested \$6.1 million in total compensation. Results span the five-year audit period: January 1, 2008, through December 31, 2012.

\* Indicates reductions made to intervenor staff members' hourly rates.

† Includes noncompensable labor, such as clerical or administrative work, and noncompensable goods, such as meals and costs related to routine travel.

Further, our review found the type and nature of the reductions to be consistent even though they represented the work of 13 different judges. For example, our review of claims found

*We did note that a lack of specificity in intervenors' claims sometimes limited commission staff's ability to precisely disallow some requested compensation.*

that the commission considered the same types of reductions, such as rate reductions, when determining the reasonableness of the compensation requests. In addition, commission staff generally included detailed explanations of why they reduced awards. For example, compensation decisions clearly stated why the commission denied compensation for tasks listed as noncompensable. Moreover, the commission explained in its decisions why it found work duplicative, including when an intervenor tasked two attorneys with working on the same legal document.

However, we did note that a lack of specificity in intervenors' claims sometimes limited commission staff's ability to precisely disallow some requested compensation. The 20 compensation decisions we reviewed indicated that commission staff were often specific in their reductions. For example, of the 294 hours an intervenor claimed for the labor of one of its attorneys, the commission staff denied 36 of these hours as excessive time allocated to a variety of tasks, which were listed explicitly in the compensation decision. However, when the intervenor did not provide a detailed breakdown of its work on a proceeding, commission staff were unable to be as precise. For example, for one decision we reviewed, commission staff reduced an award by 12 percent. Typically, commission staff would have reduced the award by considering the number of hours the intervenor staff spent on particular activities. In this case, however, commission staff found it necessary to estimate the reduction because the intervenor failed to allocate its claimed hours by issue. This method of reduction demonstrates that when intervenors fail to include sufficient detail in their claim, commission staff may not be able to precisely reduce requested compensation amounts.

### ***The Commission's Desk Review Process Is an Effective Approach for Ensuring Reasonable Compensation***

We found that the commission's desk review process was an effective mechanism to prevent intervenors from claiming unreasonable amounts of compensation. Although the commission has the authority under state law to perform field audits of intervenors' compensation claims, it has chosen to focus its efforts on reducing claims based on what it deems to be reasonable, thus mitigating any attempts by intervenors to intentionally overstate their claims. In effect, the commission's approach emphasizes the amount of time intervenors reasonably should take to complete an activity, which is more meaningful than an audit that focuses on ensuring that intervenors have documentation to support how long they actually took to complete the task, regardless of whether those hours were reasonable. According to a former program coordinator, the commission staff recognize during the proceedings when

an intervenor submits a five-page document that contains only one page of real analysis. Thus, when the intervenor tries to claim hours for five pages of work product, the commission reduces the award accordingly.

In our review of 20 compensation decisions, we saw numerous instances when commission staff reduced the number of hours intervenors claimed because the commission staff found the time charged to be excessive, inefficient, or duplicative. For example, in one claim we reviewed, an intervenor requested 7.6 hours for receiving and reviewing certain documents other parties submitted. In the commission's compensation decision, it reduced the intervenor's compensation by 3.6 hours, stating that other intervenors with participation similar to the intervenor in question requested less time for the same task and that their amount of time was more reasonable.

Further, a field audit of intervenors' documentation would have an inherent limitation in being able to detect whether intervenors were charging hours excessively. In the 20 compensation decisions we reviewed, we found that at least 95 percent of each award consisted of time intervenor staff charged for proceeding activities. Thus, any audit would invariably focus on the hours intervenors charged, rather than on costs for photocopying, postage, and other expenses.<sup>2</sup> However, an audit focused mainly on reviewing time records would most likely fail to uncover evidence that an intervenor was charging for excessive hours. If an intervenor wanted to charge more hours for a particular task than it actually took to complete, it could simply inflate hours for that task on the time sheet for the period in question. Because, in this hypothetical example, the intervenor's staff member had already falsified internal intervenor documents, any audit the commission performed of that intervenor likely would be unable to detect the artificially high number of hours claimed.

The chief administrative law judge (chief judge) does not believe that performing field audits would provide additional value. The chief judge could not think of a scenario in which the commission would need to conduct an on-site audit of an intervenor because the intervenor submits all of the documents necessary to determine the reasonableness of hours and costs claimed with its compensation claim. The chief judge commented that in the desk review process, the commission staff review the time records for every individual listed in the compensation claim and reduce the awards when staff find inefficiencies or an unreasonable number

***The chief judge does not believe that performing field audits would provide additional value.***

<sup>2</sup> Additionally, guidance issued by the commission in December 2011 requires intervenors to provide receipts and invoices for certain costs exceeding \$20.

of hours claimed. Our review of the 20 compensation decisions found that the desk review process did, in fact, result in a very thorough consideration of whether the hours intervenors claimed were reasonable.

### **The Commission Has Not Promptly Compensated Intervenors and Has Overpaid Interest**

Although the commission consistently awarded intervenor compensation during the audit period, it did not issue most compensation decisions in a timely manner. Our review revealed that the commission often failed to meet the 75-day deadline imposed by state law for awarding intervenor compensation. Utilities or the commission pay interest on awards issued after that deadline, a cost that ratepayers ultimately incur. In addition, the commission has not issued guidance to its staff or to the utilities on how to calculate interest appropriately for intervenor claims, resulting in a flawed methodology and overpayments of interest accrued on late awards the commission paid. Finally, our review of the database the commission uses for tracking the 75-day deadline indicated that it contained many errors, making it unreliable for both internal tracking and external reporting.

### ***The Commission Has Not Complied With the Statutory Deadline for Issuing Decisions on Intervenor Compensation Claims***

The commission consistently failed to meet the statutory deadline for awarding intervenor compensation. State law generally requires the commission to issue a decision on an intervenor's claim within 75 days of its submission. It is the commission's policy to require the payment of interest when it issues awards more than 75 days after an intervenor submits a claim. However, as shown in Table 4, the commission awarded funds within the required time frame for only 20 (or 6 percent) of the 336 claims submitted during our five-year audit period.<sup>3</sup> In fact, 101 (or 30 percent) of the compensation decisions that occurred during the period were more than six months late. We also noted for 2012 that there was a decrease in the number of compensation decisions issued, as well as a significantly higher percentage (56 percent) that were issued more than six months late.

***The commission awarded funds within the required time frame for only 20 (or 6 percent) of the 336 claims submitted during our five-year audit period.***

<sup>3</sup> Because we determined that the database the commission used to track the 75-day deadline for issuing decisions on intervenor claims was unreliable, we used compensation decisions and claim requests to compute the timeliness of decisions shown in Table 4.

**Table 4**  
**Timeliness of Intervenor Compensation Decisions**  
**2008 Through 2012**

| DECISION TIME FRAME   | DECISIONS MADE |           |           |           |           | CLAIMS DECIDED<br>IN TIME FRAME | PERCENTAGE OF<br>CLAIMS DECIDED<br>IN TIME FRAME |
|---|----------------|-----------|-----------|-----------|-----------|---------------------------------|--|
|   | 2008           | 2009      | 2010      | 2011      | 2012      |                                 |  |
| Timely (1 to 75 days)   | 3              | 2         | 13        | 2         | 0         | 20                              | 6%   |
| Up to three months late (76 to 165 days)                              | 23             | 21        | 31        | 38        | 2         | 115                             | 34   |
| More than three months and up to<br>six months late (166 to 255 days) | 15             | 33        | 13        | 20        | 19        | 100                             | 30   |
| More than six months and up to<br>one year late (256 to 440 days)     | 12             | 25        | 8         | 4         | 27        | 76                              | 23   |
| More than one year late<br>(More than 440 days)                       | 19             | 4         | 2         | 0         | 0         | 25                              | 7  |
| <b>Totals</b>   | <b>72</b>      | <b>85</b> | <b>67</b> | <b>64</b> | <b>48</b> | <b>336*</b>                     | <b>100%</b>                                      |

Source: California Public Utilities Commission (commission) intervenor compensation program decisions.

\* Does not include one decision the commission issued in 2010 after the California Court of Appeal instructed the commission to recalculate certain costs in a compensation award the commission originally granted in 2005.

A former coordinator stated that one reason for the commission’s noncompliance with state law is that judges often handle 12 to 14 proceedings at a time and must prioritize their workload to meet multiple statutory deadlines. Several statutory deadlines were enacted after the 75-day requirement, thus, according to the former program coordinator, making it more difficult for the commission to meet the required time frame. For example, the commission generally must resolve adjudication cases, typically involving the enforcement of policies or rules, within 12 months of the proceeding’s initiation. Another statutory deadline imposed after the 75-day requirement was a public comment period of at least 30 days on certain proposed compensation decisions. The chief judge noted that the commission’s practice is to waive the 30-day public comment period when a proposed compensation decision on a claim disallows less than 33 percent of a claimant’s request for compensation. The chief judge acknowledged that compensation decisions for which the 30-day period is not waived would almost certainly not comply with the 75-day deadline.<sup>4</sup> The commission waived the comment period in 18 of the 20 compensation decisions we reviewed.

The chief judge also stated that although the commission has not conducted any formal study or analysis, she believes several other reasons contribute to the untimely issuance of compensation

<sup>4</sup> A commission rule authorizes the commission to reduce or waive the 30-day comment period for proposed decisions on a request for intervenor compensation.

***None of the reasons offered fully explains the failure to comply with state law.***

decisions. For instance, she asserted that claims are not filed at a predictable, constant rate and several claims are often filed at approximately the same time after one or more proceeding decisions are issued. When this happens, the chief judge acknowledged that some compensation decisions on claims will be untimely because it is not possible for commission staff to process all of the claims in time for the commission to act on them within 75 days.

None of the reasons offered fully explains the failure to comply with state law. The statutory deadlines to which the chief judge referred, such as the 30-day comment period, have been in place for years, and the commission has not attempted during that time to seek a change to revise the 75-day time limit. Although some reasons for delays were provided, the commission staff do not track submitted claims in sufficient detail to identify where in the process these delays are occurring. Moreover, commission staff have never conducted any analysis to determine whether the program analysts' review or some other step in the process is leading to the delays that ultimately result in late compensation decisions. Further, the frequency of the delays might discourage some intervenors from participating in the program. In addition, we reviewed 20 compensation decisions and estimated that delays resulted in intervenors receiving approximately \$34,000 in interest for those decisions. Ratepayers ultimately incurred this additional cost.

#### ***The Commission's Failure to Issue Guidance Has Led to Incorrect Payments of Interest to Intervenors***

The commission has not issued guidance to its staff or to the utilities on how to calculate interest appropriately for intervenor claims, resulting in differing methodologies and the overpayment of interest. The commission has adopted a policy of awarding interest from the 75<sup>th</sup> day after the filing of a complete compensation claim. Although the utilities typically calculate interest and pay it along with the awarded amount, for a small subset of awards the commission does so as well with funds from ratepayer fees that utilities collect statewide.

This lack of formal guidance has led the commission to employ a flawed interest computation methodology, resulting in miscalculations and, ultimately, overpayments of interest on awards. For example, on a \$318,000 award the commission paid, accounting staff within the commission's fiscal office (accounting staff) calculated \$22,100 in additional interest by incorrectly determining the daily rate at which interest accrued on the award, among other errors. However, if the accounting staff had correctly calculated the amount of daily accrued interest, we estimate that

the commission would have paid only \$560. Commission records indicate that its accounting staff computed interest for 18 awards from March 2010 to May 2013, the period for which records were available. In reviewing \$42,000 that commission records indicated it paid for the 10 largest interest payments for which it was responsible, we estimated that the commission overpaid \$40,000. If the commission had issued guidance to its accounting staff, these overpayments might have been prevented.

The chief judge stated that the commission has not offered guidance on this subject because commission staff believed the information contained in the orders to pay interest was sufficient. However, the information provided in compensation decisions only indicated that commission staff and utilities should pay interest based on the prime three-month commercial paper rate and the date when interest should begin accruing, not a method for calculating the total interest amount. Further, we inquired of two utilities that routinely pay compensation claims as to how they calculate interest on awards. We found that their methodologies do not differ substantially from each other and appear reasonable. However, because the commission has not issued guidance on the subject, the risk exists that other utilities in the State may have used incorrect methods of calculating interest. Having guidance that provides one consistent way of calculating interest on awards for both the commission and the utilities would help ensure that intervenors always receive an appropriate amount of interest.

Once we brought this issue to commission staff's attention, they began drafting guidance for internal use and for distribution to utilities. As of June 2013 the process for drafting the guidance was still ongoing. We noted that the draft guidance for internal use contains a step for a supervisory review of the calculations, which should help to avoid the types of problems we documented. However, until the commission adopts formal guidance, it lacks assurance that interest payments on awards are calculated consistently and accurately.

***The Commission Staff's Failure to Adequately Maintain the Intervenor Compensation Database Makes It Less Effective at Tracking Claim Deadlines***

Our review of the database that commission staff use to track compensation claims and ensure that compensation awards are made in a timely manner revealed many errors, making the database unreliable for internal and external reporting. At the time of our review, two program analysts (analysts) oversaw and maintained the database, an electronic file containing information pertaining to compensation awards made to intervenors. The analysts use

***Until the commission adopts formal guidance, it lacks assurance that interest payments on awards are calculated consistently and accurately.***

*Our review of the database revealed that analysts had incorrectly entered information related to 95 of 337 awards, resulting in an error rate of 28 percent.*

the database to track the 75-day statutory deadline for issuing intervenor awards after they have been submitted. We expected that, to avoid awarding interest, the commission would maintain an accurate database to effectively track when it must issue compensation decisions. However, that was not the case.

By comparing information in the database to compensation decisions and claim requests, we reviewed all entries applicable to our five-year audit period, a total of 337 awards. Our review of the database found that analysts had incorrectly entered information related to 95 of these awards, resulting in an error rate of 28 percent. Eleven of the errors related to the date the intervenor submitted the claim, which is critical information needed to accurately track when a compensation decision must be issued to avoid awarding interest that ultimately must be borne by ratepayers. Additionally, four awards were not included in the database, and one award included in the database was understated by \$60,000. In a number of cases, the database was incorrect because analysts failed to update it to reflect changes that occurred during the claims review process, such as corrections to the amount of compensation intervenors requested. In other cases, the cause of the error was not apparent.

Because analysts use the database to track the 75-day deadlines after which interest on compensation awards begins to accrue, the failure to include accurate dates could possibly delay compensation decisions and increase the amount of interest owed on those awards. Moreover, since the commission has provided information from the database to the Legislature and may do so in the future, it should ensure that all of the data it contains are as accurate as possible. To address these concerns, the commission plans to hire an additional analyst in July 2013 who will be responsible for the database's accuracy and deadline tracking, among other activities.

### **The Commission Could Do More to Ensure Compensation Is Appropriate**

State law requires the commission to take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The commission's approach throughout our audit period was to calculate compensation using hourly rate tables that consider the years of experience of intervenor staff. These tables were created based on a market rate study the commission completed in 2005. Although since then the commission has annually adopted or considered adopting updates to the hourly market rates awarded to intervenors, it has repeatedly acknowledged that a comprehensive market rate study is necessary to ensure compliance with state law. In addition, analysts were unable to demonstrate that they had verified the qualifications of

intervenor staff appearing before the commission for the first time, and the commission has no formal procedures for doing so. Finally, the commission has no procedures in place to comply with a statutory requirement prohibiting it from compensating intervenors that have a certain type of conflict of interest.

***The Commission Needs to Conduct a Comprehensive Market Rate Study to Set Hourly Rates for Intervenors***

Since 1993 state law has required that the intervenor compensation awarded by the commission take into consideration—but not exceed—the market rates paid to persons of comparable training and experience who offer similar services. Since that time, the commission has used several approaches to meet this requirement. Although most recently the commission used an annual update process to adjust the hourly market rates paid to intervenors, it concluded that a comprehensive market rate study is necessary to ensure compliance with state law.

According to a 2012 commission resolution, the commission considered each request for an hourly rate individually, one proceeding at a time, until it completed a market rate study in 2005 (2005 study). According to the program coordinator, before the 2005 study, the commission determined market rates for intervenors on a case-by-case basis by comparing individuals' skills, expertise, and years of experience to those awarded compensation in other proceedings. The program coordinator stated that this case-by-case approach worked reasonably well until an intervenor challenged determinations that found one attorney warranted a higher rate than the commission separately determined for another attorney with more training and experience in a different proceeding.

The 2005 study considered market rates by reviewing compensation that the commission and utilities paid for regulatory services. The commission used the information from the study to create hourly rate tables for intervenors to use in their compensation claims. According to the program coordinator, the commission developed this more comprehensive process to annually set rates for intervenor staff in order to avoid inconsistent determinations and to reduce the time needed to determine appropriate rate and fee levels in compensation decisions. The hourly rates for attorneys were separated into the following groups, based on the number of years since the completion of law school: 0–2 years, 3–4 years, 5–7 years, 8–12 years, and 13 years or more. Similarly, the commission set compensation amounts for experts based on their years of experience. After 2005 the commission has adopted or considered adopting annual cost-of-living adjustments (COLAs) to the hourly rates for attorneys

***The commission considered each request for an hourly rate individually, one proceeding at a time, until it completed a market rate study in 2005.***

*In resolutions dating back to 2008, the commission has repeatedly acknowledged that a comprehensive market rate study is necessary to ensure compliance with the law.*

and experts to keep the market rates paid to intervenors up to date.<sup>5</sup> The commission has used a variety of methodologies to adjust the annual COLAs, relying on data such as wage escalation information for regulatory services provided by utility and state employees, indices of general inflation, and the commission's observations regarding conditions in the state and national economies.

However, in resolutions dating back to 2008, the commission has repeatedly acknowledged that a comprehensive market rate study is necessary to ensure compliance with the law. Although the commission reviewed its own compensation rates and collected data from the California utilities that paid the bulk of the intervenor compensation awards to establish its hourly rate tables, several commission resolutions have stated that those studies have limitations. In November 2012 the commission held a public workshop to discuss the adjustment process for hourly rate ranges and other concerns affecting the program. According to an April 2013 resolution that resulted from the workshop, the commission acknowledged that implementing the comparable market rate requirement has been difficult. The resolution indicated that there were several reasons the 2005 study was insufficient and the commission has faced obstacles when attempting to comply fully with state law. Some of the reasons noted are as follows:

- The commission has found that regulatory services are not an easily definable commodity. The resolution stated that the services intervenors provide are varied and draw on a wide variety of legal and nonlegal expertise.
- The commission found insufficient data from the utility industry to capture all of the possible market rate ranges because the majority of the data collected were from utility representatives who had extensive experience before they appeared at the commission; the study yielded few data points for those appearing before the commission with little or no experience.
- The commission has little compensation data for many kinds of nonlegal specialties.

According to the resolution, the difficulties the commission has faced in fully complying with the requirement to implement comprehensive market rates explains why the commission has relied mostly on annual COLAs to adjust its hourly rate tables since they were first created from the 2005 study. Yet, the commission has acknowledged that merely updating the hourly rates based entirely on targeted or general

<sup>5</sup> From 2009 to 2011, the commission decided not to adopt an annual COLA, basing its decision on a review of economic indicators.

measures of inflation risks serious deviation from compensation actually paid to regulatory professionals. The commission further stated that the hourly rate tables should be benchmarked periodically to actual compensation data. To address this issue, its April 2013 resolution stated that the commission would hold another public workshop in the near future to discuss the updating process for hourly rate ranges, benchmark studies, and COLAs for 2014 and later years. As of June 2013 the program coordinator hoped to schedule the workshop by early August 2013 but said that doing so will depend on the judges' caseload considerations. However, until the commission establishes market rates that comply with state law, it may be inappropriately compensating intervenors.

*Until the commission establishes market rates that comply with state law, it may be inappropriately compensating intervenors.*

### ***Commission Staff Could Not Demonstrate That They Verified Intervenor Qualifications***

Although analysts claimed that they had informal methods to verify the qualifications of intervenors appearing in proceedings, the commission lacked any formal procedures for doing so and was unable to demonstrate that its analysts had performed such verifications in the past. State law requires the commission to compensate intervenors' staff at rates not exceeding market rates that are commensurate with their training and experience for similar services. In our review of the 20 claims, we found that intervenors generally submitted some descriptive information about the qualifications of their staff to support their request for a specific market rate from the tables the commission developed to standardize hourly rates for attorneys and experts. However, the analysts were unable to demonstrate that they consistently verified the qualifications of intervenors' staff during the audit period.

The commission appears to have had some informal methods for verifying qualifications. For example, a former analyst stated that in 2010 she began to verify qualifications by checking the California State Bar (Bar) Web site for the membership status of each attorney appearing before the commission for the first time.<sup>6</sup> Current analysts stated that, as of January 2013, they also call previous employers of each attorney or expert to ensure that each intervenor staff member has the experience he or she claims when participating in a regulatory proceeding for the first time. However, no formal guidance or procedures instruct the analysts to verify such qualifications, and the analysts could not provide

<sup>6</sup> A commission resolution allows intervenor staff with previous experience before the commission to use an approved escalation factor when calculating compensation requests for subsequent work. For example, if the commission approved an hourly rate for an attorney in 2009, that attorney may increase the hourly rate by the approved escalation factor when seeking compensation for his or her work in 2010.

***If the commission does not consistently check the qualifications of new intervenor staff, it could award funds in excess of the appropriate market rate.***

any documentation showing that they had performed such verifications on past compensation claims. Although the wording of one compensation decision we reviewed indicated that an analyst might have verified an attorney's Bar status, there was no evidence that this was done consistently.

Verifying the qualifications and prior experience of intervenor staff is important to ensure that the commission awards compensation at appropriate hourly rates. For example, if an intervenor requests compensation as an attorney, the commission awards compensation at a higher hourly rate than it does to experts. In 2012, if an intervenor claimed to be an attorney with three to four years of experience, he or she could request to be compensated at \$205 to \$240 per hour. However, according to the commission's hourly rate tables, an expert with the same level of experience could receive only \$130 to \$190 per hour. If the commission does not consistently check the qualifications of new intervenor staff, it could award funds in excess of the appropriate market rate.

We encountered one instance in which an intervenor actually did not have the qualifications that commission staff indicate they now verify for attorneys. In 2011 the commission learned that the former executive director of Utility Consumers' Action Network (UCAN), who was claiming compensation as an attorney, was not an active member of the Bar.<sup>7</sup> A May 2011 judge's ruling noted that common commission practice allows active Bar members and non-Bar members alike to appear in proceedings, and neither the commission's rules nor state law requires a valid law license to appear before the commission. However, we noted that the status of intervenor staff as attorneys or experts affects the rates paid for compensation. In 2009 and 2010 the former executive director's years of experience qualified him to receive \$155 to \$390 per hour as an expert. Although the former executive director requested \$330 per hour for work performed in those years for a proceeding, which is at the low end of the range for attorneys with his experience (\$300 to \$535 at that time), his extensive experience might have led the commission to award him market rates at the high end of that range, and thus, the commission could have overcompensated him based on his qualifications.

The program coordinator acknowledged that commission staff should create a formal process for verifying qualifications before awarding compensation funds to intervenors and, as of June 2013, the commission was in the process of drafting those procedures. However, until these new procedures are in place, future staff

<sup>7</sup> The Bar's Web site indicates that the former executive director had an inactive membership status for more than 23 years before he subsequently became an active member in October 2011.

could omit the verification process from their review of claims, resulting in overcompensation of intervenors who overstate their qualifications.

***The Commission Lacks a Process to Ensure That Intervenors Do Not Have a Certain Type of Conflict of Interest***

State law prohibits intervenors representing the interests of small commercial customers who receive bundled electric service from electrical corporations from receiving compensation if the intervenors have conflicts arising from prior representation before the commission. However, in our review, we learned that the commission lacks a process to ensure that it does not compensate intervenors that may have this type of conflict. Specifically, commission staff stated that they do not verify that intervenors pose no such conflicts of interest and so were unable to determine whether such a conflict existed. To determine whether intervenors had disclosed this information voluntarily, we reviewed five proceedings for disclosures of conflicts of any kind, including those related to financial conflicts, and found that intervenors in those proceedings made no such disclosures.

When commission staff fail to determine whether intervenors have prohibited conflicts of interest, the commission risks compensating intervenors unlawfully. After we informed commission staff of this risk, they began revising their templates and guidance to intervenors, requiring them to indicate whether they have such a conflict resulting from prior representation. As of June 2013 these revisions were yet to be completed.

***When commission staff fail to determine whether intervenors have prohibited conflicts of interest, the commission risks compensating intervenors unlawfully.***

**Intervenors Have Mixed Views on the Quality of the Commission's Guidance**

The Legislature has declared its intent that the program be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process. Thus, we would expect the commission to offer guidance to intervenors on how to meet statutory requirements necessary to receive compensation. The commission has a document, available on its Web site, with instructions on how to submit compensation claims as well as the requirements needed to establish eligibility. Further, during our audit period the commission revised the guidance it provides to intervenors. For example, in December 2011, the commission addressed certain noncompensable activities, such as intervenor staff attempting to claim compensation for meals, and specified when travel costs could be claimed for compensation.

The commission also created standardized forms to assist intervenors who plan to participate in proceedings and seek compensation for their work. Additionally, the commission has analysts and a public information office to assist in answering questions intervenors might have concerning filing compensation claims. The public information office also assists in answering questions regarding general participation in commission proceedings.

Intervenors had mixed reactions when we asked whether the guidance the commission provides is adequate. For example, one intervenor told us it believes the commission guidance on submitting compensation claims is sufficient, although intervenor staff do call the commission's public information office from time to time for answers to technical questions. According to staff with another intervenor, the commission should provide more guidance as to what counts as reasonable compensation among members of its intervenor team to minimize reductions due to internal duplication of effort, as well as what is considered reasonable compensation when an intervenor works with another intervenor to submit a joint comment in a proceeding.

***Comments that a group of intervenors submitted in response to the commission's invitation to suggest additional issues for a scheduled workshop revealed certain concerns.***

Further, comments that a group of intervenors submitted in response to the commission's invitation to suggest additional issues for a scheduled workshop revealed certain concerns. A joint statement one intervenor submitted to the commission on behalf of a group of nine intervenors in October 2012 asked the commission to more clearly identify or explain the standards the commission uses when assessing compensation requests and how it makes decisions about applying such standards.<sup>8</sup> The statement expressed the belief that the commission's review process seemed to be applying certain standards in assessing the reasonableness of the hours requested in a compensation request, but that it was unclear what these standards were and how they were being applied. However, this topic was not discussed at the November 2012 workshop. Shortly before that workshop, the former program coordinator contacted stakeholders and stated the commission would limit the discussion to only the topics initially set forth in the notice announcing the scheduled workshop. With regard to suggested additional topics, such as the standards used when assessing compensation requests, the former program coordinator informed stakeholders that, to the extent that commenters suggest program changes, they could file appropriate petitions seeking commission consideration of those suggestions.

<sup>8</sup> The nine intervenors included five of the 10 that we identified in Table 2 on page 10 as having the highest amount of awards during our audit period. The intervenor submitting the statement on behalf of the group was the intervenor that received the most money.

Despite the intervenors' reactions, the chief judge believes that the guidance is adequate and the commission offers sufficient avenues to intervenors to express their concerns. When we asked specifically about the joint statement, the chief judge noted that the intervenor who submitted the joint statement is already an expert when it comes to submitting intervenor compensation claims. In addition, the chief judge stated that intervenors have options available to them if they disagree with the commission's compensation decisions. For instance, intervenors can comment within the 30-day comment period if their claims are reduced by 33 percent or more.

However, the fact that some intervenors have unresolved questions related to how the commission determines reasonable compensation could indicate inefficiencies in the compensation award process. Thus, we believe it would be beneficial for the commission to work with intervenors through workshops or other means to clarify any confusion related to how it determines whether the work intervenors perform is reasonable.

### **The Program Has Allowed a Variety of Interests to Have a Voice in Proceedings**

In our review of the 20 compensation decisions, we found that the program fulfills a fundamental part of its purpose despite the administrative weaknesses highlighted elsewhere in this report. The Legislature has declared its intent that the program be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process. Moreover, a 1998 commission decision that made revisions to the program acknowledged the importance of receiving input from a socioeconomically, culturally, and geographically diverse public, and indicated that one purpose of the program was to reduce barriers to participation such customers sometimes face. In our review of the 15 regulatory proceedings represented in our selection of 20 compensation decisions, we found that organizations participating in the program represented a broad array of interests, and many requested compensation for their contributions, thus fulfilling a key purpose of the program.

The intervenors in the 15 proceedings represented a variety of interests, including environmental concerns, low-income and minority ratepayers, and ratepayers in a specific geographic region. For example, one proceeding we reviewed included participation from several organizations representing interests as broad as San Diego County utility customers—UCAN—and as narrow as Ramona residents dedicated to the preservation and protection of a single road (Mussey Grade Road Alliance). In the

*The fact that some intervenors have unresolved questions related to how the commission determines reasonable compensation could indicate inefficiencies in the compensation award process.*

same proceeding, we also found intervenors representing disabled individuals (Disability Rights Advocates and Center for Accessible Technology) and California farmers and ranchers (California Farm Bureau Federation).

These intervenors not only participated in commission proceedings, but many also requested compensation for their contributions. These intervenors represented groups that might not otherwise have the funding to participate in proceedings. For example, according to its staff, one intervenor representing a community would have been unable to participate in a proceeding without the intervenor compensation program. Specifically, the intervenor's staff stated that the costs for attorney and expert time were largely unfunded in advance of the compensation award, as the community was unable to raise enough funds to pay for representation. According to the intervenor's staff, the attorney agreed to advocate on behalf of the intervenor without any compensation, taking the risk that the commission would award little or nothing for the intervenor's efforts. The intervenor's staff stated that the compensation award paid for the attorney and expert time after the fact.

Further, the program enables specific perspectives to be considered. For instance, in another proceeding, an intervenor raised issues unique to the disabled community to ensure that this population was given direct consideration by the commission in making decisions on a telecommunications program in which many people with disabilities are enrolled.

We found that as many as 10 intervenors submitted claims for compensation in a single proceeding while representing a variety of interests. Further, as many as six intervenors actually received compensation in a single proceeding. We would not expect all participating intervenors to claim or receive compensation, as some intervenors are ineligible to do so. For example, intervenors that represent utility customers for whom participating does not pose a significant financial hardship would not be eligible to claim compensation. In addition, one intervenor told us that it does not seek compensation for every proceeding, such as when it does not participate for the full length of the case. However, because our review indicated that the program received participation from intervenors that requested compensation and represented such a variety of interests, we concluded that the program is fulfilling this element of its purpose.

***In our review of 15 regulatory proceedings, we found that as many as 10 intervenors submitted claims for compensation in a single proceeding while representing a variety of interests.***

## Recommendations

To prevent intervenors from expending resources in proceedings where they are ineligible to receive compensation, the commission should comply with state law by issuing within 30 days preliminary rulings concerning an intervenor's eligibility, when required to do so.

The commission should determine the cause of its lack of compliance with state law requiring it to issue award decisions within 75 days of the date an intervenor submits a compensation claim, and it should determine what actions to take to rectify the problem. The commission should ensure that it has sufficient information, such as detailed tracking information regarding claims, to identify where in the process delays are occurring. If the commission determines that the current 75-day statutory period is unreasonable, it should seek a change in state law.

To ensure that utilities and commission staff pay the correct amount of interest to intervenors, the commission should complete its effort to develop and distribute a methodology for calculating reasonable interest on compensation decisions issued after the 75-day deadline. The commission should follow the new procedure to ensure that it calculates interest payments appropriately. To the extent reasonable, the commission should recoup the interest overpaid to intervenors.

To ensure that it has reliable information concerning its compensation decisions for internal and external reporting, the commission should implement procedures to ensure the accuracy of its award database.

To comply fully with state law, the commission should conduct a comprehensive market rate study and update it periodically.

Commission staff should complete their effort to develop formal procedures to verify and document the qualifications of intervenors' attorneys and experts. The commission should implement the new procedures to ensure that it awards intervenors an appropriate hourly rate based on verified qualifications.

To ensure that the commission complies with state law and does not inappropriately compensate intervenors, it should complete its effort to develop procedures for staff to routinely check whether an intervenor that represents the interests of small commercial customers who receive bundled electric service from an electrical corporation may have a conflict of interest arising from prior representation before the commission.

The commission should work with intervenors through workshops or other means to clarify any confusion related to how it determines that work intervenors perform is reasonable.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: July 23, 2013

Staff: Karen L. McKenna, CPA, Audit Principal  
Aaron Fellner, MPP  
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Legal Counsel: Scott A. Baxter, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

## Appendix

### AWARD AND FINANCIAL INFORMATION RELATED TO 10 INTERVENORS

#### Compensation Awarded to the 10 Intervenor With the Highest Awards from 2008 to 2012 Has Varied Over Time

We identified the 10 intervenors that had the largest cumulative awards in our five-year audit period. Although the amount awarded to the 10 intervenors varied over that time, the California Public Utilities Commission (commission) awarded significantly higher compensation to the intervenors in 2009. As shown in Table A.1, excluding 2009, the difference between the largest amount the commission awarded to these intervenors—\$3.6 million in 2011—and the lowest amount awarded—\$3.1 million in 2008—is about \$500,000. However, the amount the commission awarded in 2009, \$7.8 million, is more than twice the amount awarded to these intervenors in any other year.

**Table A.1**  
**Total Amounts Awarded to the 10 Intervenor With the Highest Awards 2008 Through 2012**  
**(In Thousands)**

| INTERVENOR                            | YEAR           |                |                |                |                | TOTALS          |
|---------------------------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
|                                       | 2008           | 2009           | 2010           | 2011           | 2012           |                 |
| The Utility Reform Network            | \$2,378        | \$2,822        | \$2,512        | \$2,592        | \$2,386        | \$12,690        |
| Utility Consumers' Action Network     | 122            | 2,243          | 238            | 311            | 50             | 2,964           |
| Disability Rights Advocates           | 28             | 601            | 211            | 245            | 256            | 1,341           |
| Aglet Consumer Alliance               | 318            | 249            | 56             | 31             | 256            | 910             |
| The Greenlining Institute             | 23             | 268            | 103            | 97             | 238            | 729             |
| Center for Biological Diversity       | -              | 694            | -              | 32             | -              | 726             |
| Consumer Federation of California     | 45             | 235            | 15             | 93             | 249            | 637             |
| Green Power Institute                 | 97             | 193            | -              | 169            | 43             | 502             |
| Rancho Peñasquitos Concerned Citizens | -              | 461            | -              | -              | -              | 461             |
| Natural Resources Defense Council     | 93             | 63             | 157            | 28             | 51             | 392             |
| <b>Totals</b>                         | <b>\$3,104</b> | <b>\$7,829</b> | <b>\$3,292</b> | <b>\$3,598</b> | <b>\$3,529</b> | <b>\$21,352</b> |

Source: California Public Utilities Commission intervenor compensation program decisions.

We found that the amount awarded in 2009 was largely due to an increase in the number of compensation awards made by the commission and the conclusion of three regulatory proceedings that spawned some large compensation decisions. The commission issued

85 intervenor compensation decisions in 2009, or 13 more than in any other year in our audit period. In addition, five of those compensation decisions alone accounted for \$3.6 million, or 46 percent, of the \$7.8 million awarded to the 10 intervenors in that year.

Three of the five largest compensation decisions in 2009 were for work that intervenors performed related to the Sunrise Powerlink Transmission Project proceeding (Sunrise proceeding). The Sunrise proceeding dealt with a utility's proposal to build a high-voltage power line between Imperial and San Diego counties. The commission noted in its decision that the proceeding was heavily contested, involving lengthy evidentiary hearings, voluminous testimony, and dozens of public meetings. According to a former intervenor compensation program coordinator, the length of transmission proceedings can mean intervenors have to wait to claim compensation for several years, until the issuance of the final decision of the proceeding. The Sunrise proceeding lasted three years—it commenced in December 2005, and the decision approving the project was issued in December 2008.

The commission awarded \$1.1 million to Utility Consumers' Action Network (UCAN), \$694,000 to Center for Biological Diversity (CBD), and \$461,000 to Rancho Peñasquitos Concerned Citizens (RPCC) for their work on this proceeding. These awards represent the largest awards made to UCAN and CBD within our audit period, as well as the only claim ever filed by or awarded to RPCC. Further, the \$1.1 million the commission awarded to UCAN is the largest single compensation award within our audit period. The commission ultimately awarded more than \$2.2 million in 2009 to the three intervenors for work they conducted on this one proceeding.

Further, in 2009, the commission also awarded \$784,000 to The Utility Reform Network (TURN) and \$586,000 to UCAN for their work on two separate general rate case proceedings. A general rate case is the major regulatory proceeding for California utilities, which provides the commission an opportunity to perform an exhaustive examination of a utility's operations and costs. The commission determined that each intervenor made a substantial contribution in its respective proceeding and compensated them for the thousands of hours worked by their staff and expert consultants on the proceedings.

### **The 10 Intervenors Receive Revenue From a Variety of Sources**

Intervenors may receive revenue from other sources in addition to intervenor compensation awards. There is no state law, regulation, or commission rule prohibiting intervenors from receiving revenue from outside sources in addition to compensation

awards for work in commission proceedings. Other revenue sources included activities unrelated to work at the commission, membership fees, and grants. As shown in Table A.2, seven of the 10 intervenors received revenue from other sources for the most recent fiscal year for which each intervenor’s financial data were available and a compensation award was made. For these seven intervenors, their annual revenue attributable to intervenor compensation ranged from less than 1 percent to 89 percent.

**Table A.2**  
**Percentage of Revenue Derived From Intervenor Compensation for the 10 Intervenor With the Highest Awards**

| INTERVENOR                            | YEAR*   | PERCENTAGE OF INTERVENOR'S REVENUE FROM INTERVENOR COMPENSATION |
|---------------------------------------|---------|---|
| The Utility Reform Network            | 2011–12 | 89%   |
| Utility Consumers’ Action Network     | 2010–11 | 24  |
| Disability Rights Advocates           | 2011    | 2   |
| Aglet Consumer Alliance               | 2012    | 100   |
| The Greenlining Institute             | 2011    | 2   |
| Center for Biological Diversity       | 2011    | <1  |
| Consumer Federation of California     | 2012    | 25  |
| Green Power Institute†                | 2011    | 100   |
| Rancho Peñasquitos Concerned Citizens | 2009    | 100   |
| Natural Resources Defense Council     | 2011–12 | <1  |

Sources: California State Auditor’s calculations primarily using intervenor financial statements and other documents for the revenue and California Public Utilities Commission program decisions for the intervenor compensation.

Note: The percentages presented are for the most recent fiscal year for which data were available and an award was received.

\* Some intervenors’ fiscal years run from July through June, while other intervenors’ fiscal years match the calendar year.

† The Green Power Institute is the renewable energy program of the Pacific Institute and is part of the Pacific Institute from a financial standpoint. The percentage of the Pacific Institute’s revenue derived from intervenor compensation was 6 percent.

The percentage of an intervenor’s revenue derived from intervenor compensation can vary depending on the type of organization participating in a proceeding and the organization’s purpose. For instance, TURN is a statewide consumer organization that represents utility ratepayers in regulatory, legislative, and judicial proceedings before the commission and in other forums, among other activities. TURN receives the majority of its revenue from intervenor compensation. Another intervenor, the Natural Resources Defense Council, is a national organization dedicated to protecting the world’s natural resources and ensuring a safe and healthy environment for all people, and it receives only a small portion of its revenues from intervenor compensation. By contrast, RPCC was created to advocate and protest on behalf of electric utility customers of San Diego County. Specifically, RPCC focused

on the Rancho Peñasquitos area of San Diego and advocated against new electric transmission lines and the corresponding economic impacts on the public. It was formed to participate in a single commission proceeding and received 100 percent of its revenue in 2009 for its participation in that proceeding.

### **A Few of the 10 Intervenors Received Some Funding From Outside Sources for Work on Commission Proceedings**

We were also asked to determine, to the extent possible, whether intervenors received payment from other sources for their participation in proceedings for which they also received compensation from the commission (double-recovery). As discussed previously, there is no state law, regulation, or commission rule prohibiting an intervenor who is awarded compensation by the commission from receiving compensation from an outside source for work in commission proceedings. In addition, the commission does not find the issue of additional compensation to be problematic. In 2003 a utility asked the commission to deduct the amount an intervenor had received from private donations from any compensation award to prevent double-recovery. The commission stated it suspected other intervenors had fundraising ability as well, and it had never required them to provide budgets or other sources of funding.

Nevertheless, we noted during our review that in some instances an intervenor explicitly stated in its claim whether it was receiving compensation from an outside source. For example, in one instance an intervenor's claim specifically stated, "No costs or expenses sought in this request were recovered from any grant or other outside source." In another instance, an intervenor stated that it had funded a portion of one of its expert's time through a grant and was not seeking compensation for that amount. We found in our review that some intervenors have received outside revenue and intervenor compensation for work on commission proceedings. However, as described below, our limited review suggested that it occurred infrequently.

We were able to perform only limited procedures to address this objective because intervenors are private organizations, and we have statutory authority to examine their financial records only to the extent that the commission may, which is limited to records supporting the intervenor compensation claim. We interviewed the 10 intervenors and asked whether they had received outside payment for participation in commission proceedings. The responses of nine of the 10 intervenors indicated they had not double-recovered their expenses, although in some instances intervenors informed us that they had received funding from

other sources that could be used toward work on commission proceedings. We requested supporting documentation from certain intervenors to verify whether these funds were earmarked for work at the commission.

One intervenor, CBD, stated it received two conditional loans for work on the Sunrise proceeding. We examined the loan documents and agreed with CBD's assertion that it was required to repay the loans out of any intervenor compensation award it might receive. The documents indicated that if the commission had awarded CBD less than the full amount requested, CBD would have paid back a certain percent of the loans, while the remaining amount of the loans would be considered a grant. In either case, CBD would not receive and keep compensation from two sources (the loan and the commission) for its work on the proceeding.

We noted one instance where an intervenor might have double-recovered. Disability Rights Advocates stated that it claimed compensation for some work that might also have been paid for, in part, by outside sources. Disability Rights Advocates received \$152,000 in grants and fellowships from outside entities from 2007 through 2010 to support its work at the commission. It received two \$40,000 grants in 2007 and 2008 to promote before the commission telecommunications policies and services that are responsive to the needs of people with disabilities. Disability Rights Advocates stated this money's purpose was to support it in its participation in commission matters and compensate for some of the time spent on matters that did not result in formal intervention. Disability Rights Advocates also received one two-year fellowship for a new attorney in the amount of \$36,000 per year, which went toward this attorney's work on commission proceedings.

Disability Rights Advocates noted that the rates of compensation it receives from the commission are considerably less than its hourly rates awarded by courts in its fee motions for its regular work, so these outside funding sources partially covered this difference, enabling it to participate in commission proceedings. Disability Rights Advocates stated the funding also covered work that was not compensated at all through commission proceedings, such as investigations that did not culminate in formal proceedings.

Finally, we requested grant agreements and fundraising mailers from TURN, the intervenor with the most money awarded to it, although it stated that it does not solicit, nor does it receive, funding to support the costs for compensating its legal staff for participating in proceedings before the commission. TURN's major revenue sources outside of intervenor compensation are grant funding and direct mail appeals. TURN provided us with the documents we requested for fiscal year 2011-12 to support its

assertion that these revenue sources are not used to compensate its staff for participating in commission proceedings. We examined the documents and did not find any evidence that its grants or fundraising moneys were earmarked specifically for its work in commission proceedings.

July 2013

STATE OF CALIFORNIA

EDMUND G. BROWN JR., *Governor***PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

July 3, 2013

Elaine M. Howle, State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the response of the Public Utilities Commission to the draft report on the audit of the Intervenor Compensation Program. A copy of the response is also included on the enclosed CD, entitled "July 3 CPUC Response to Audit Report".

Please contact Richard Smith at 415.703.1083 or [rs1@cpuc.ca.gov](mailto:rs1@cpuc.ca.gov), if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon  
Executive Director

## Response to Intervenor Compensation Program Audit Report

### Summary

The Commission thanks the California State Auditor for its careful and thorough audit of the Intervenor Compensation Program. The Commission will adopt all of the State Auditor's recommendations because they will help to further improve this successful program. The Commission has already begun implementing many of the State Auditor's recommendations to ensure the program continues to encourage a wide variety of voices to be heard in Commission proceedings in the most cost effective manner possible.

We applaud the audit findings that the Commission generally ensures that intervenor compensation requests comply with state law, and that the Commission's review process is effective for ensuring reasonable compensation. To accomplish this difficult task, the Commission must balance the need to carefully and thoroughly consider compensation requests with the requirement to timely issue award decisions.

### Background on Intervenor Compensation Program

The Intervenor Compensation Program is intended to encourage the participation of all customers in Commission proceedings by helping them overcome the cost barriers to effective and efficient participation. The Commission agrees with the State Auditor conclusion that the program has allowed a variety of voices to be heard in Commission proceedings. The steady growth in the number of compensation awards is an indication of the program's success.

The Commission began compensating intervenors for substantial contributions to Commission decisions in 1981. From 1981 through 1984 (the year that §§ 1801, et seq., were added to the Public Utilities Code), the Commission issued an average of 11 decisions per year addressing compensation requests. Since that time, there has been a steady increase in the number of requests and awards, with the Commission issuing 31 award decisions during the first five months of 2013.<sup>1</sup>

The program's success, in part, accounts for the difficulty in issuing award decisions within 75 days, as required by § 1804(e). The first year § 1804(e) was in effect, the Commission issued 18 compensation awards (approximately 1.5 awards per month). By 1998, the number of award decisions more than doubled to an average of 3.75 awards per month, and in 2009 the Commission issued an average of more than seven awards per month. Since 2009, intervenors have been filing approximately 6.5 requests for compensation each month.

When the number of compensation requests was small, compliance with the requirement to issue compensation decisions within 75 days could be achieved with existing resources. However, the growth in the number of requests, combined with the need to meet other statutory obligations

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<sup>1</sup> For example, the Commission issued 23 award decisions in 1990, 31 award decisions in 1995, 50 award decisions in 2000, and 104 award decisions in 2006.

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established after enactment of § 1804(e)<sup>2</sup>, has made it increasingly difficult to issue compensation decisions within 75 days with existing resources.

The Commission addressed this challenge by routinizing the compensation request process and developing a standardized “claim/decision” template in 2008. Most intervenors now submit requests using the template, performing much of the clerical work needed to prepare award decisions. The Commission also assigned dedicated staff to coordinate the processing of requests and preparing compensation decisions using the template information completed by intervenors. Use of the template has streamlined the preparation of award decisions by substantially reducing the amount of data entry and other clerical work, and thereby reducing the time required to prepare decisions. However, considerable ALJ Division resources are still required to ensure that compensation requests are reasonable and comply with state law.

Although intervenors now complete portions of the award decision template, the Commission must still analyze intervenors’ requests to ensure compliance with §§ 1801, et seq., (e.g., to determine an intervenor’s substantial contributions), to verify the accuracy and reasonableness of amounts requested, to determine the appropriate expert and attorney fees, to follow up with intervenors for clarifying or additional information, to respond to intervenor’s questions on various issues, and to track requests, awards and related information. Given the ALJ Division’s limited resources, timely resolving compensation requests is particularly challenging when several intervenors file requests at approximately the same time (e.g., within 60 days after a decision issues in a large proceeding with numerous parties and intervenors).

When faced with the choice of ensuring that compensation requests comply with state law and that awards are reasonable or issuing compensation decisions within 75 days, the Commission has chosen to ensure that compensation requests comply with state law and that awards are reasonable. To mitigate the impact of award decisions requiring more than 75 days, the Commission requires interest to be paid on awards, beginning on the 75th day after the filing of a complete compensation request.<sup>3</sup>

The Commission is exploring ways to further streamline and shorten the process to meet the statutory deadline.

**Audit Recommendation: To prevent intervenors from expending resources in proceedings where they are ineligible to receive compensation, the Commission should comply with state law by issuing preliminary rulings concerning an intervenor’s eligibility within 30 days when required to do so.**

**Response:** The Commission agrees with this recommendation. The ALJ Division is implementing this recommendation by, among other things, modifying the database used to record compensation request and award information to include information concerning NOIs and NOI rulings. In addition, the ALJ Division is implementing quality assurance procedures to verify the accuracy of database information, and is in the process of adding a staff person to,

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<sup>2</sup> For example, § 1701.5 requires ratesetting and quasi-legislative proceedings to be completed with 18 months (Added by Stats. 2003). Administrative Law Judges (ALJs) handling multiple proceedings must carefully balance work priorities to ensure each of their assigned mission-critical proceedings is timely completed.

<sup>3</sup> D.98-04-059.

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among other things, perform database quality control and to alert assigned ALJs about upcoming deadlines.

**Audit Recommendation:** The Commission should determine the cause of its lack of compliance with state law requiring it to issue award decisions within 75 days of the date an intervenor submits a compensation claim, and it should determine what actions it should take to rectify the problem. The Commission should ensure that it has sufficient information to identify where in the process delays are occurring, such as detailed tracking information regarding claims. If the Commission determines that the current 75-day statutory period is unreasonable, it should seek a change in state law.

**Response:** The Commission agrees with this recommendation. The audit report acknowledges that the Commission has a robust process for determining whether the costs and expenses the intervenors claim are reasonable, a process that generally ensured that intervenor claims met statutory requirements and included appropriate supporting documentation. Careful and expert analysis of each and every claim is required to ensure just and reasonable award decisions. This analysis necessarily includes reviewing the decision, testimonies, transcripts and other proceeding records, as well as detailed time and expense records.

Once prepared, award decisions are processed along with other proposed decisions and resolutions, according to a timetable necessitated by requirements applicable to Commission meetings and agendas. For example, items for a particular meeting agenda must be ready ten days prior to that Commission meeting, and items missing this deadline are scheduled for a subsequent meeting. These time requirements absorb many of the 75 days permitted for issuing award decisions, and further streamlining of the claims process will not reduce this time.

The ALJ Division has streamlined processes from time to time in response to the increase in claims, and will continue to seek ways to speed the processing of requests without sacrificing accuracy or fairness. The ALJ Division is modifying the database used to record compensation request and award information to include additional tracking information. This will allow the ALJ Division to more accurately estimate the time required to perform specific activities in order to better focus its process improvement efforts. The ALJ Division is also deploying additional resources to monitor important deadlines. The ALJ Division is exploring ways to further streamline and shorten the process.

**Audit Recommendation:** To ensure that utilities and Commission staff pay the correct amount of interest to intervenors, the Commission should complete its efforts to develop and distribute a methodology for calculating reasonable interest on compensation decisions issued after the 75-day deadline. The Commission should follow the new procedure to ensure that it calculates interest payments appropriately. To the extent reasonable, the Commission should recoup the interest overpaid to intervenors.

**Response:** The Commission agrees with this recommendation. The Commission is taking steps to ensure that the interest on awards is computed accurately and consistently, and will take reasonable steps to recoup erroneous overpayments of interest. In June 2013, the Commission undertook an informal survey of the methods utilities currently use to compute interest on awards. The ALJ Division will recommend, via a draft resolution to be issued within the next 60 days, that the Commission adopt a reasonable method to be used by all utilities for calculating

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interest on awards. The public will have an opportunity to comment on the draft resolution, and the method may be revised in response to comments.

The ALJ Division and the Commission's Fiscal Office are establishing written procedures for processing awards to be paid from the Intervenor Compensation Fund, including the method for calculating interest to be paid on awards. The Commission will use the same method for calculating interest as that adopted for the utilities.

**Audit Recommendation: To ensure that it has reliable information concerning its compensation decisions for internal and external reporting, the Commission should implement procedures to ensure the accuracy of its award database.**

**Response:** The Commission agrees with this recommendation. The ALJ Division has drafted and is implementing written procedures to verify information entered into the award tracking database, and to document when and by whom the information was verified. These procedures, among other things, prohibit the person that enters data into the database from verifying the accuracy of that information. In addition, the database is being modified to include information concerning NOIs and additional information concerning claims/decisions (e.g., if 30-day public review is required, etc.).

**Audit Recommendation: To comply fully with state law, the Commission should conduct a comprehensive market rate study and update it periodically.**

**Response:** The Commission agrees with this recommendation.

The Commission agrees that it should perform a comprehensive market rate study and update it periodically. Section 1806 requires the Commission to take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The Commission previously determined market rates for intervenors on a case-by-case basis (by comparing attorneys/experts skill, expertise, and years of experience to those awarded compensation in other proceedings).

To avoid inconsistent determinations and to reduce the time needed to determine appropriate rate and fee levels, the Commission first established its hourly rate ranges after reviewing compensation paid to Commission and utility attorneys and non-attorneys for regulatory services. Since then, the Commission has updated the hourly rate ranges annually. Each update adjusted the ranges by means of a cost-of-living adjustment, adopted after public review and comment.

A Commission resolution on this matter, Resolution ALJ-287, recognized that the hourly rate information should be periodically "benchmarked" to actual compensation data, and directed the Chief Judge to continue the informal process to develop a benchmarking approach, consistent with § 1806. The ALJ Division is committed to developing a practical and effective way to maintain current market rates and will seek funding for a comprehensive market rate survey.

**Audit Recommendation: Commission staff should complete their effort to develop formal procedures to verify and document the qualifications of intervenors' attorneys and experts. The Commission should implement the new procedures to ensure that it awards intervenors an appropriate hourly rate based on verified qualifications.**

**Response:** The Commission agrees with this recommendation. The ALJ Division is implementing procedures to perform additional verification of intervenors' qualifications.

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In most proceedings, the assigned ALJ reviews experts' testimony and other information, and may have directly examined or observed the cross-examination of an expert under penalty of perjury pertaining to both the witness's testimony and experience. This is an effective way to evaluate and verify an expert's qualifications.

For all compensation requests, the ALJ Division carefully examines experts' relevant experience when determining appropriate hourly rates. In addition, the ALJ Division consistently verifies, among other things, that attorneys are licensed and in good standing with the California Bar Association. The ALJ Division is now documenting the procedures that it uses to verify qualifications and will maintain these and other written procedures on the Commission's internal computer network known as Content Server.

**Audit Recommendation: To ensure that the Commission complies with state law and does not inappropriately compensate intervenors, it should complete its effort to develop procedures for staff to routinely check whether an intervenor that represents to interest of small commercial customers who receive bundled electric service from an electrical corporation may have a conflict of interest arising from prior representation before the Commission.**

**Response:** The Commission agrees with this recommendation. Prior to the audit, the Commission did not have a process to verify whether intervenors had conflicts of interest as defined in § 1802.3. The ALJ Division has drafted written procedures to determine whether an intervenor has a conflict that would make the intervenor ineligible for compensation.

**Audit Recommendation: The Commission should work with intervenors through workshops or other means to clarify any confusion related to how it determines that work intervenors perform is reasonable.**

**Response:** The Commission agrees with this recommendation.

The Commission's Intervenor Compensation Program web page contains guidelines, instructions, and forms for intervenors, and links to decisions and resolutions on program matters, including eligibility, financial hardship, substantial contribution, interest on awards, and guidelines used to set hourly rates.<sup>4</sup> The webpage also provides a link to the Commission's Public Advisor's Office to help the public participate in proceedings and assist with questions about the program. The ALJ Division also provides ongoing guidance and assistance to intervenors that file requests.

Intervenors are diverse and include well-established organizations regularly appearing before the Commission to individual members of the public intervening in a Commission proceeding for the first time. The Commission makes every effort to provide intervenors and the public with clear accurate information.

The ALJ Division will develop and post a "Frequently Asked Questions" document on the Intervenor Compensation Program web page to assist intervenors with common questions. The ALJ Division will explore ways to provide intervenors the most useful and accurate information possible, including a workshop with intervenors or other means.

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<sup>4</sup> The "Intervenor Compensation Program Guide and Instructions on Completing Intervenor Compensation Standardized Forms" is available at: <http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/>

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Little Hoover Commission  
Department of Finance  
Attorney General  
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