UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Office of Public Participation Docket No. AD21-9

**Comments of Public Citizen, Inc.**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We are active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located at our web site.[[1]](#footnote-1)

Section 319 of the Federal Power Act[[2]](#footnote-2) states that “there shall be an office in the Commission to be known as the Office of Public Participation . . . the Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.” Section 319 allows the Commission to promulgate rules to offer financial compensation for attorney fees and other expenses to intervenors and participants who substantially contribute to a significant Commission proceeding if participation otherwise would result in significant financial hardship.

Public Citizen has long advocated for the creation of this office, spearheading a rulemaking request to the Commission in 2016,[[3]](#footnote-3) and doing a number of presentations discussing the importance of the office, the need for intervenor compensation, and summaries of similar state-level programs that provide financial assistance to public interest intervenors.[[4]](#footnote-4)

The mission of the Office of Public Participation, therefore, should be to help individuals and the public interest get on the record in Commission proceedings and to participate in FERC-sanctioned activities such as Regional Transmission Organization (RTO) stakeholder events. To accomplish these objectives, the Office should have two broad functions:

1. Provide extensive *outreach* to identify and directly engage with members of the public and public interest organizations that will be impacted by any proceeding before the Commission and Commission-jurisdictional consideration, *educate* individuals and organizations as to how they could be impacted; and *assist* the party with on the record participation at the Commission.
2. Coordinate direct financial assistance to ensure members of the public and public interest entities can meaningfully participate in Commission proceedings and FERC-sanctioned activities.
   1. Coordination must include administrating financial compensation for qualified intervenors in FERC proceedings.
   2. For *Most In Need* intervenors, the Office should oversee a *Public Interest Attorney Referral Program* to provide immediate, up-front assistance for those intervenors that cannot ride out the intervenor compensation process.

Funding for Office staff should be set according to needs as determined by the Office Director. Funding and staffing must be *sufficient* to accommodate interested and affected parties, and *reliable* to provide reasonable assurance to less-resourced parties that they will be made whole and be able to meaningfully participate.

The Office requires, at a minimum, at least 50 full time staff, recommended as follows:

* Director and Deputy Director
* Environmental Justice Managing Director (reports to Director)
* EJ Managing Director Staff (3)
* Public Outreach & Engagement Director
* Field Manager
* Social Media Coordinator
* Supervisory Attorney
* Managing Attorney
* FPA/NGA technical assistance attorneys (3)
* Public Interest Attorney Referral Program review staff (3)
* Most In Need administration (5)
* Intervenor funding liaison (3)
* Intervenor funding administrative processing for ALJ division (6)
* Energy analyst (2)
* RTO field staff (6)
* Emerging RTO field staff (1)
* Natural gas field (8)
* General administrative support (4)

An Advisory Board comprised of diverse representation of public interest perspectives would assist in the efforts of the Office to maximize opportunities for public interest engagement. An Advisory Board would meet regularly to review public engagement strategies and accomplishments of the Office and produce reports and recommendations for improvements and assessments. The Advisory Board could include the following: A) Two members representing interests of environmental justice communities; B) a representative designated by the National Association of State Utility Consumer Advocates; B) a non-governmental consumer advocate representing low-income households; C) a representative of landowner interests.

The Office should be neutral on positions of Applicants in proceedings before the Commission—the only mission of the office is to engage and assist the public to participate. While the Office should not provide direct support for substantive comments or protests, the Office could actively provide assistance for interventions in Commission proceedings. During the recent Commission listening sessions, it was clear that many members of the public struggle with tasks such as filing interventions, and allowing the Office to provide services including submitting interventions would still preserve the Office’s neutrality and ability to coordinate with the Commission without violating *ex parte* communication restrictions.

Intervenor opportunities and assistance with participating in intervenor funding will be coordinated by the Office. Compensation claims will be administratively reviewed by the Commission’s Administrative Law Judge division. Separating the assistance provided by the Office from the evaluation of payments under the intervenor compensation program (by having ALJ’s perform the intervenor compensation award assessment) will help preserve the integrity of the intervenor compensation program.

Section 319 of the Federal Power Act describes an intervenor funding procedure that suggests compensation is tied to a Commission order or determination (“provide compensation for reasonable attorney’s fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention or participation **substantially contributed to the approval, in whole or in part, of a position advocated by such person**”).

There are members of the public that do not have existing organizational infrastructure or resources to be able to take on the upfront risk of riding out the intervenor compensation process until the Commission issues an order. In addition, there are members of the public and organizations whose advocacy before FERC may be a one-time occurrence, and therefore it is not prudent for them to build internal staffing resources to pursue long-term FERC engagement. The Office should designate such individuals and organizations as *Most In Need*, qualifying them for participation in the Office’s *Public Interest Attorney Referral Program*.

The Office shall administrate a *Public Interest Attorney Referral Program* for *Most In Need* individuals and organizations. The Office will develop a review and standards process to accept qualified attorneys to participate in the *Public Interest Attorney Referral Program*. Referral Program attorneys will charge no fees to clients, but rather consent to being paid only through the intervenor compensation program. The Office will routinely evaluate the performance of attorneys participating in the program as part of its ongoing certification process.

It is important to clarify what constitutes a Commission order for purposes of evaluating intervenor compensation claims. It would be unreasonable to require qualifying intervenors to wait potentially months or years for a final order on rehearing to be compensated. Therefore, we propose that *any* Commission order, be it procedural or otherwise, would trigger the end of that round of intervenor funding consideration. Filings after such a procedural Commission order would initiate a new round of intervenor compensation consideration. A rehearing request, for example, would start a fresh intervenor funding assessment period. So one FERC docketed proceeding may feature multiple, sperate intervenor funding assessment periods. This way, qualifying intervenors would likely have more timely consideration of their substantial contributions to Commission proceedings.

In addition to segmenting intervenor compensation claims within Commission procedural orders, it is also important that the intervenor compensation evaluation process feature clear and reasonable timelines so that the process does not drag out too long.

Parties seeking compensation could be required to submit a *Notice of Intent to Claim Intervenor Compensation* at the beginning of the proceeding. The Office of Public Participation would determine whether a party qualifies as *Most In Need*.

No later than 60 days after the issuance of a Commission order in the proceeding, those seeking compensation should file a claim with the ALJ Intervenor Compensation division. For purposes of intervenor compensation claims, a Commission Order is any significant Order. For example, a rehearing request would trigger a new intervenor compensation claim.

The claim would be processed and evaluated by an Administrative Law Judge, who would be required to issue a Proposed Decision on the award within 75 days of the claim being filed by the party.

The party seeking compensation would have 15 days to dispute any clerical or substantive errors in the Proposed Decision, which could be appealable to a panel of ALJs. If no appeal is made, then the Proposed Decision becomes Final.

No later than 30 days after a Final Decision on awarding compensation, the claim would be paid to the applicant.

**In any proceeding filed by a public utility—such as any rate filing under Section 205 of the Federal Power Act; FPA Section 203 filings; or Petitions for Declaratory Orders—the public utility initiating the proceeding will be financially responsible for paying intervenor compensation claims as determined by the ALJ.** For Notice of Proposed Rulemakings, Technical Conferences, or any other Commission-initiated docket, and any FPA Section 206 proceedings (including those initiated by private parties), the Commission shall be responsible for providing the intervenor compensation award as determined by the ALJ.

The Office shall have authority to provide grants to assist with public interest participation in FERC-jurisdictional activities that do not involve a formal proceeding at the Commission, such as stakeholder events at RTOs.

The Commission has clear authority under 42 USC § 7178 to allocate funding for all of these intervenor funding programs, including having utilities be financially responsible for certain intervenor compensation awards; for intervenor compensation payments that are the responsibility of the Commission, and grants to assist with RTO participation.

Respectfully submitted,

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1. [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/) [↑](#footnote-ref-1)
2. 16 USC § 825q–1. [↑](#footnote-ref-2)
3. www.citizen.org/wp-content/uploads/public-citizen-ferc-public-participation-petition.pdf [↑](#footnote-ref-3)
4. www.citizen.org/article/presentation-to-we-act-for-environmental-justice-on-the-need-for-an-office-of-public-participation-at-the-federal-energy-regulatory-commission/ [↑](#footnote-ref-4)