

100% RENEWABLE ENERGY ACTION TEAM WEBINAR

THE NEW FERC OFFICE OF PUBLIC PARTICIPATION & FINANCIAL COMPENSATION FOR EJ INTERVENORS

Presenter: Tyson Slocum

Public Citizen

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Expanding Public Interest
Access To Utility
Commission Proceedings
Through Intervenor
Funding



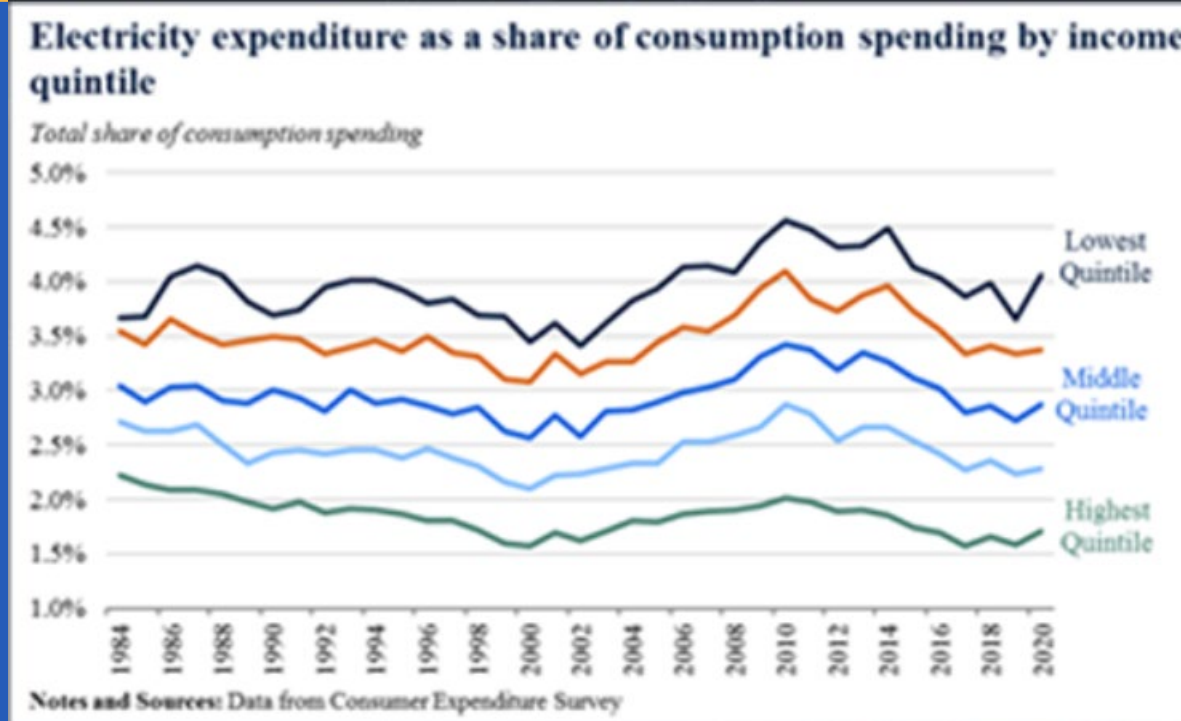
Federal Energy Regulatory Commission (FERC) Determines How Much Your Monthly Utility Bill Is & Whether To Approve Natural Gas Infrastructure

- **FERC Oversees Electricity Markets Covering 2/3 of the U.S.**
 - The Commission's proceedings decide about half of the monthly utility bill that families pay by setting rates that power plants and transmission lines can charge.
 - FERC establishes the rules of how electricity markets work which impact how clean energy can compete with fossil fuels.
 - **Power market oversight includes enforcement to protect households from market manipulation, typically by Wall Street traders and other sophisticated financial entities.**
- **FERC Conducts Environmental Reviews for Natural Gas Pipelines and Natural Gas Export Facilities (LNG)**
 - FERC also regulates the rates that natural gas and oil pipelines can charge (but only oversees environmental reviews for gas pipelines, not oil)

FERC Is An Independent Regulator

- **FERC is comprised of a maximum of five Commissioners serving set four-year terms, with one serving as Chair.**
- **All are nominated by the President & confirmed by the Senate.**
- **The President's party can control no more than three of the seats, with the rest balanced by the opposing political party.**
- **Once a Commissioner is confirmed by the Senate, they cannot be fired by the President. They are supposed to be independent from the White House.**

Energy Justice



Equity in both the social & economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by our fossil-fuel intensive energy system. Mitigating energy poverty by making access to energy a universal right.

Why Utility Regulators Need To Address Energy Justice

- **44% of U.S. households**—or 50 million families—are low-income. According to the U.S. Department of Energy's Low-Income Energy Affordability Data Tool, the national average energy burden for low-income households is 8.6%, three times higher than for non-low-income households. In some areas of the country, energy burden can be as high as 30%.
- This has only gotten worse under COVID, with a sharp rise in service disconnections.
- Communities of color disproportionately bear the brunt of harmful emissions and fossil fuel infrastructure pollution. According to the Biden White House Justice40, 93 million Americans living in 23,400 census tracts are disadvantaged.

If You're Not At The Table, You're On The Menu

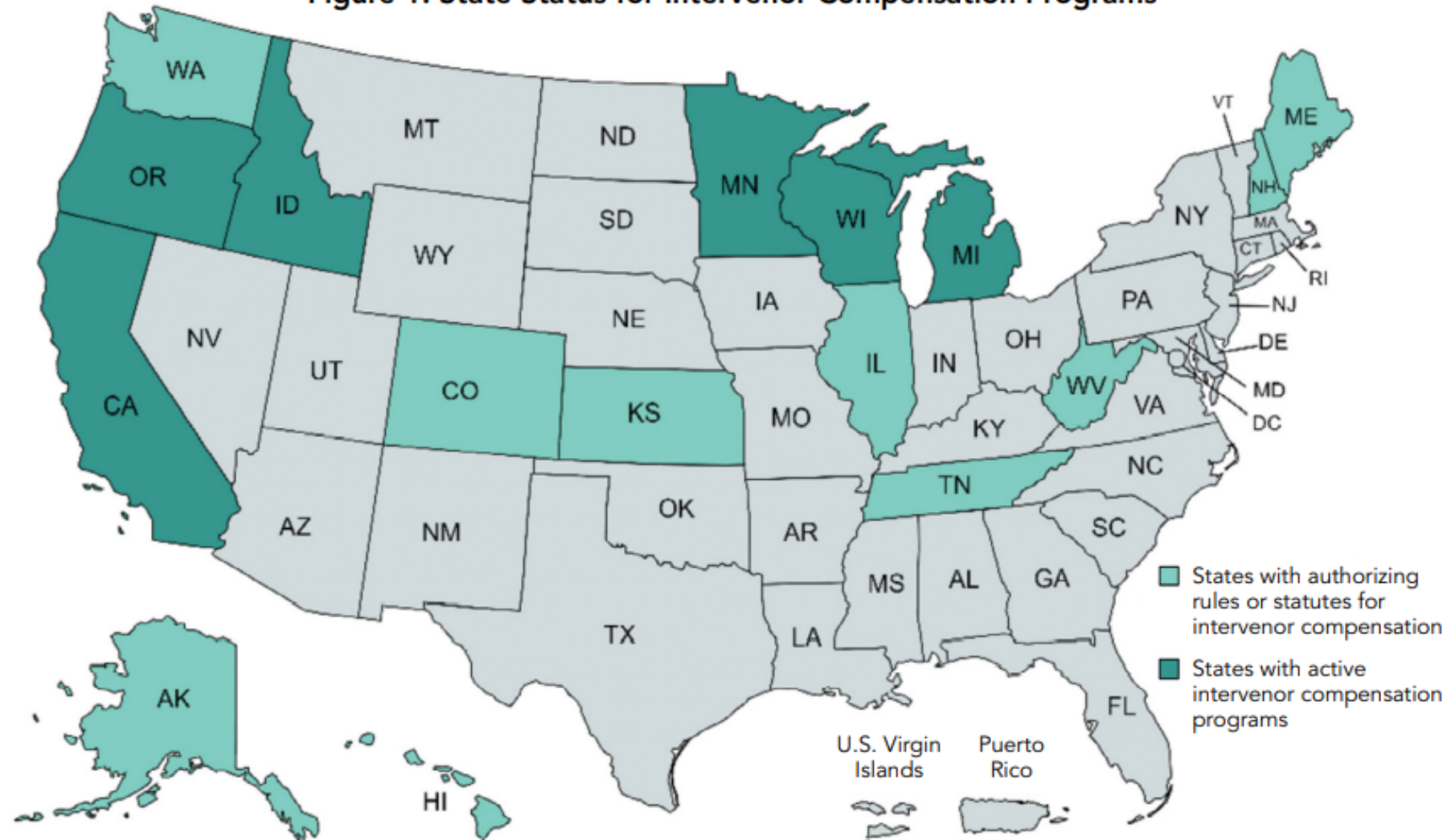
- **Utility regulators are adjudicatory agencies, deliberating much like a court of law. They are limited to making decisions only based upon the facts presented before them in a proceeding.**
- **Energy companies and utilities have nearly unlimited funds to hire attorneys, expert witnesses and consultants to strengthen their case.**
 - In most instances, utilities can recover these regulatory costs from ratepayers!

In contrast, public interest organizations have scant resources, resulting in an unlevel playing field.

Public Citizen Solution: Provide Intervenor Funding For Public Interest Advocates at FERC, State Utility Commissions & Environmental Agencies

Intervenor funding provides qualifying public interest organizations the potential to obtain financial reimbursement of their staff resources, legal & expert witness fees, and all other costs associated with their intervention.

Figure 1. State Status for Intervenor Compensation Programs



While sixteen states have authorized intervenor compensation plans, only six of them are actively being used, and two (Illinois and Washington) are currently being established. **Table 1. Features of Authorized State Intervenor Compensation Programs** shows a summary of the key features of authorized state intervenor compensation programs. The six states with active programs—California, Idaho, Michigan, Minnesota, Oregon, and Wisconsin—are discussed further in [Section 3.0](#).

Seventeen U.S. States + FERC Authorize Intervenor Funding

- **California is the gold bitcoin standard (CA Public Utilities Code § 1801-1807). The state awarded \$12 million in compensation last year.**
- **New York doesn't offer it in utility proceedings, but Article 10 of the Public Service Law provides intervenor funding for community organizations seeking to participate before the Board on Electric Generation Siting**

California is the ~~gold~~ bitcoin standard of intervenor funding

- **California Public Utilities Code § 1801-1807**
 - Advocates can seek to recover legal, expert witness and any other reasonable costs associated with intervening.
 - Fees are awarded if the advocate's "participation makes a substantial contribution to a commission order or decision"
 - *Substantial contribution* is defined as: "substantially assisted the commission in the making of its order or decision because the order or 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. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."
 - Intervenor contribution determinations are made by the internal and independent Administrative Law Judges within the Public Utility Commission.



California Public Utilities Commission

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

Report 2012-118

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.

The California state auditor determined the only
administrative Weakness was that, because
intervenors weren't being compensated fast
enough, they were being overpaid in late interest
payment fees

THE STATE INTERVENOR FUNDING PROGRAM IS A HUGE SUCCESS

Last year, Oregon passed HB 2475, amending its existing intervenor funding to provide up to \$500,000/year to advocates representing low-income households and EJ communities

SECTION 3. ORS 757.072 is amended to read:

757.072. (1) A public utility providing electricity or natural gas may enter into a written agreement with an organization that represents broad customer interests in regulatory proceedings conducted by the Public Utility Commission relating to public utilities that provide electricity or natural gas. The agreement shall govern the manner in which financial assistance may be provided to the organization. The agreement may provide for financial assistance to other organizations found by the commission to be qualified under subsection (2) of this section. More than one public utility or organization may join in a single agreement. Any agreement entered into under this section must be approved by the commission before any financial assistance is provided under the agreement.

(2)(a) Financial assistance under an agreement entered into under this section may be provided only to organizations that represent [*broad customer*] interests in regulatory proceedings before the commission relating to public utilities that provide electricity or natural gas **that are:**

(A) The broad interests of customers;

(B) The interests of low-income residential customers; or

(C) The interests of residential customers that are members of environmental justice communities.

(b) The commission by rule shall establish such qualifications as the commission deems appropriate for determining which organizations are eligible for financial assistance under an agreement entered into under this section.

(c) **The total aggregate financial assistance available to all organizations that represent the interests described in paragraph (a)(B) and (C) of this subsection from all public utilities providing electricity or natural gas may not exceed \$500,000 annually.**

Michigan statute § 460.6L-M

- **Establishes a Utility Consumer Participation Board with members appointed by the Governor. The Board oversees a *Utility Consumer Representation Fund*, which disburses upfront grants to encourage the participation of public interest intervenors. EJ groups have recieved funding under this program.**



FERC Has Had Intervenor Funding Authority Since 1978, But Hasn't Established It—Until Now

Former U.S. Senator Howard Metzenbaum, Speaking On the Senate Floor, 1978, About the Importance of Intervenor Funding for the Office of Public Participation:

*For the first time, the Congress has assured the electric consumers of this country that their voice will be heard. And Mr. President, I should point out that not only will the consumer's voice be heard, but the conference report provides that if the individual or individuals who "substantially contribute" to the ultimate determinations of the hearings **may be compensated for their efforts**. This is a great victory for the consumer, who will finally be able to compete on an even footing with the utility industry of this Nation. I would like to commend my colleagues on the Conference Committee for preserving this provision.*

But One Year After This Speech, Utilities Lobbied Congress and Inserted Language Defunding the Office

“None of the funds appropriated for Department of Energy activities by this Act shall be used to pay expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.”

On December 27, 2020 President Trump signed the *FY2021 Omnibus and COVID Relief and Response Act* (HR133). The accompanying joint House-Senate Appropriations Committee Report (Division D—Energy & Water) states:

“FERC is directed to submit to the Committees on Appropriations of both Houses of Congress not later than 180 days after enactment of this Act a report detailing how it will establish and operate the Office of Public Participation required under section 319 of the Federal Power Act, beginning in fiscal year 2022. As part of the report, FERC shall provide an organizational structure and budget for the office sufficient to carry out its statutory obligations. The report shall assume that funding for the Office of Public Participation will be derived through annual charges and filing fees as authorized by the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986.”

Office of Public Participation Statutory Requirements:

- **The OPP Director shall coordinate assistance to the public, including to persons intervening, participating or proposing to intervene in proceedings before the Commission.**
- **The Commission can provide compensation for reasonable attorney's fees, expert witness fees, and other costs of participating in any FERC proceeding to any person whose participation **substantially contributed** to the approval, in whole or in part, of a position advocated by such person.**
- **Such compensation may be paid only if the Commission has determined that—**
 - (A) the proceeding is significant, and
 - (B) such person's participation without receipt of compensation constitutes a significant financial hardship.

The Office of Public Participation Doesn't Change The Law Or Standards to Address Economic & Environmental Justice: It Simply Provides Direct Financial & Logistical Support To Give Communities Access to the Resources Needed to Meaningfully Participate In + Contribute To On-the-record Proceedings

Public Citizen Envisions Two Broad Functions of the Office of Public Participation

First, conducting extensive outreach and providing technical assistance to those representing the interests of consumers, environmental justice, climate and equity; tribes; and communities impacted by infrastructure.

Second, coordinating financial assistance, with FERC's Administrative Law Judges conducting the award evaluation.

The only advocacy conducted by the Office is encouraging public participation at FERC. The Office will take no positions on tariffs or pipelines, other than to work hard to ensure the public is aware, knowledgeable, and equipped with the resources required to meaningfully participate.

The FERC Office of Public Participation must have field staff to meet the public where they live

- **For all applications for construction and operation of interstate natural gas pipelines, and submissions for pipeline abandonment, FERC OPP staff should immediately engage impacted communities and serve as a point of contact for assistance. Communities should hear from OPP before being contacted by lawyers for the pipeline companies. OPP staff must travel onsite for some period to work with the local community.**
- **The FERC OPP should have dedicated staff tasked to each of the six Regional Transmission Organizations: California-ISO, PJM (13 states from Illinois to Maryland/DC), New York-ISO, ISO-New England, Midcontinent Independent System Operator (15 states from Montana to Louisiana) and Southwest Power Pool (parts of 9 states from North Dakota to Texas), including field offices at each of these six RTOs/ISOs.**
- **FERC OPP staff will have unfettered access to RTO meetings, and provide reports on RTO proceedings for public dissemination.**
- **Consideration could be made to extend qualifying intervenor funding for the public interest to meaningfully participate in RTO stakeholder processes (and similar North American Electric Reliability Corporation stakeholder meetings).**

Our Proposed Intervenor Funding Mechanics

- **Parties seeking compensation could be required to submit A Notice of Intent to Claim Intervenor Compensation at the beginning of the proceeding.**
- **In no later than 60 days after the issuance of an order in the proceeding, those seeking compensation should file a 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.**
- **No later than 10 days after a Final Decision on awarding compensation, the claim would be paid to the applicant.**

From Our April 2021 FERC Comments

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 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.

Attorney Referral Program

- **In comments to FERC in Docket No. AD21-9, we proposed that the Office of Public Participation designate *Most In Need* status for those organizations and individuals that lack resources or infrastructure to utilize the intervenor funding process.**
- **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.**

Glick Announces Appointment of Elin Katz as Director Of FERC's New Office of Public Participation

October 12, 2021



[Federal Energy Regulatory Commission](#)

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Office of Public Participation (OPP)



Office of Public Participation (OPP)

Overview

[How to Participate](#)

[Contact FERC](#)

[Intervene](#)

[File a Comment](#)

About OPP

Pursuant to [Section 319](#) of the Federal Power Act, the Commission has established the the Office of Public Participation (OPP) to assist the public with Commission proceedings. The Commission has produced a [public report](#) to guide the development of the office based on [stakeholder feedback](#) during listening sessions, a full-day workshop, and a written comment period.

The public can contact OPP now for assistance navigating Commission proceedings of all types. Examples include questions on when and how to intervene, comment, file motions, or seek rehearing. OPP will not assist in the actual drafting of pleadings and other submissions.

Quick Links

- [Oct 7, 2021 - Office of Public Participation Workshop on Technical Assistance](#)
- [Workshop Regarding the Creation of the Office of Public Participation](#)
- [FERC Report on the Office of Public Participation](#)

Next Steps on FERC OPP

We are working with new OPP Director Elin Katz on a proposed rulemaking by the end of the year to flesh out details of how intervenor funding will work.