



# State Approaches to Intervenor Compensation

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NARUC Center for Partnerships &  
Innovation

**MONDAY, DECEMBER 20, 2021**

**3:00 – 4:00PM ET**

# WHAT IS NARUC

- The National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization founded in 1889.
- Our Members are the state regulatory Commissioners in all 50 states & the territories. FERC & FCC Commissioners are also members. NARUC has Associate Members in over 20 other countries.
- NARUC member agencies regulate electricity, natural gas, telecommunications, and water utilities.



# WHAT IS NARUC'S CENTER FOR PARTNERSHIPS AND INNOVATION?

- Grant-funded team dedicated to providing technical assistance to members.
- CPI identified emerging challenges and connects state commissions with expertise and strategies.
- CPI builds relationships, develops resources, and delivers trainings.



## NARUC CPI Topical Areas

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# STATE APPROACHES TO INTERVENOR COMPENSATION

Moderator: **Chair Rebecca Valcq**, Public Service Commission of Wisconsin

Panelists:

- **Michelle Hubbard**, Senior Director, Power, Renewables and Utilities, FTI Consulting
- **Dr. Mark Toney**, Executive Director, The Utility Reform Network
- **Timothy O'Connor**, Senior Director and Senior Attorney, Energy Transition Strategy, Environmental Defense Fund





FTI Consulting: Power, Renewables and Utilities

## *State Approaches to Intervenor Compensation*

*Presented to:*



**NARUC**

National Association of Regulatory  
Utility Commissioners

*Michelle Hubbard, Senior Director and Kenneth A. Sosnick—Managing Director*



# White Paper on Intervenor Compensation



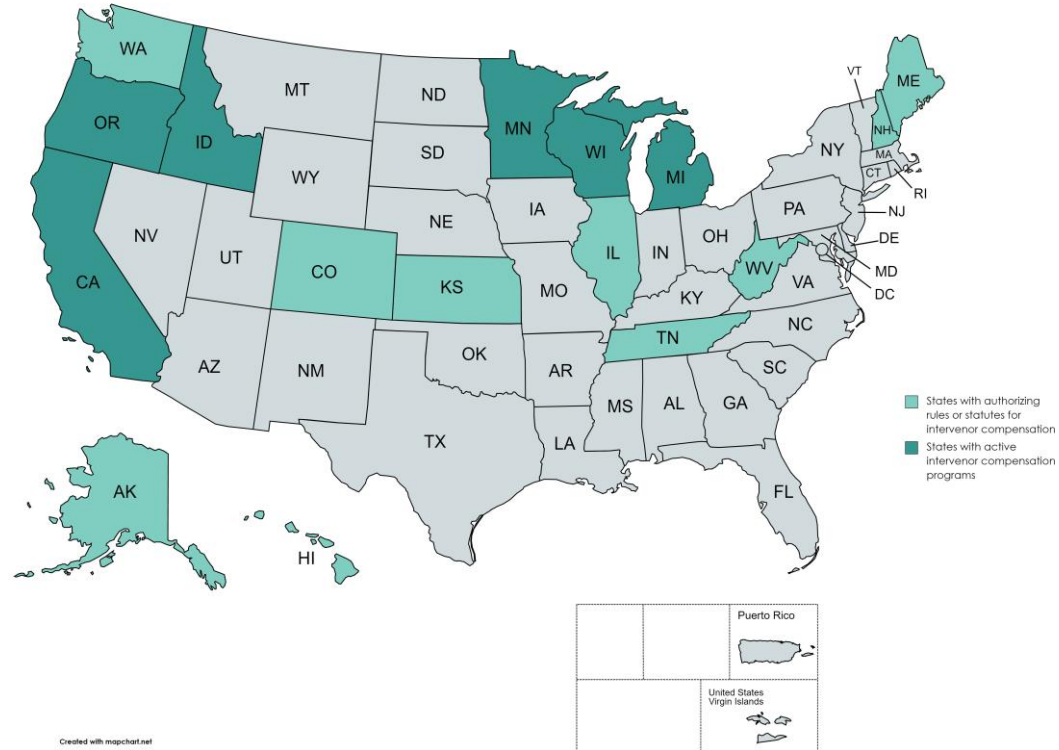
## What is Intervenor Compensation?



## U.S. States and Territories with Authorized Intervenor Compensation Programs



# States with Authorized Intervenor Compensation Programs





## Features of an Intervenor Compensation Program

# Program Features

## Types of Proceedings

State	Electric	Gas	Other	Type of Proceeding
Alaska	X			
California	X	X	X	
Colorado	X	X		
Hawaii	X	X		Integrated Resource Plans only
Idaho <sup>1</sup>	X	X	X	
Illinois	X	X		Rate cases
Kansas	X <sup>2</sup>			PURPA related proceedings
Maine	X	X	X	Related to PURPA or non-PURPA issue
Michigan	X	X		
Minnesota	X	X	X	Rate cases
New Hampshire	X	X	X	
Oregon	X	X		
Tennessee	X			PURPA related proceedings
Washington	X	X		
West Virginia	X			PURPA related proceedings
Wisconsin	X	X	X	

<sup>1</sup> In any case involving electric, gas, water or telephone utilities with gross Idaho intrastate annual revenues exceeding \$3,500,000.

<sup>2</sup> Subject to PURPA.

## Program Features

### Other

#### Eligibility

- Varies (exclude utilities in direct competition)
- Main themes:
  - Financial hardship to intervenor
  - Contribute materially to the decision in the proceeding
  - Represent interests not otherwise adequately represented in the proceeding

#### Costs and Limits

- Most of the programs are based on reasonable expenses for attorney fees, expert witness fees and others
- Some states have provisions comparing to market-based rates: Alaska, California, Kansas, Maine, Tennessee, Wisconsin
- Limits: Idaho, New Hampshire and Minnesota for individual proceedings
- Total program limits: Wisconsin, Oregon, Michigan

#### Grant v. Cost Reimbursement

- Three states have programs that allow for intervenors to receive awards “up front” in a grant-based model:
  - Michigan, Oregon and Wisconsin
- Other states are based on a cost reimbursement model where intervenors file claims at the conclusion of the proceeding and an award is made on whether and how much each receives

#### Program Costs and Recovery

- None of the programs are funded by taxpayers
- They are either funded directly by the utilities involved in that particular proceeding, or utilities pay into a fund that is then distributed to intervenors



## Active State Programs

# California

## Program Highlights

The program is administered under the California Public Utility Commission (“CPUC”) Administrative Law Judge (“ALJ”) Division. They currently have six employees who administer the program.

The program **pays out the most in intervenor compensation awards and issues the most decisions among state programs**. According to the CPUC, in 2020, their program issued 114 decisions with 148 filed claims, and is awarding \$10-\$15 million per year.

California has many resources available to intervenors to aid in the process of applying for and receiving compensation.

- Available in formal proceedings of the Commission involving electric, gas, water and telephone utilities.
- Available to a customer, organizations representing customers or eligible local government entity.
- Compensation refers to reasonable advocate fees, expert witness fees, and other reasonable costs of preparation for and participation in a proceeding.
- Cost reimbursement plan – intervenors file a notice of intent at the beginning of the proceedings and file a claim at the conclusion of the proceeding.
- Market study for reasonable costs
- There are no statutory limits on the amount of compensation that can be paid to an intervenor.
- Intervenors must prove the basis of financial hardship.
- Strict deadlines to meet in order to receive an award.
- Awarded compensation is paid by the utility involved in the proceeding and payments are allowed as an expense for the purpose of establishing rates of the utility, as a dollar-for-dollar adjustment to rates.
- Backlog of cases waiting for award.
- There is no specific annual report on the program, but there is a general report filed by the CPUC that shows total claims and awards under the program.
- There is no regular audit of the program and no specific metrics by which the success of the program is measured.

# Idaho

## Program Highlights

In any case involving regulated electric, gas, water or telephone utilities with gross Idaho intrastate annual revenues exceeding \$3,500,000, intervenors can apply for intervenor funding.

- Specifically prohibits payments to intervenors who are in direct competition to the public utility involved with the proceeding.
- Costs must be reasonable and should be itemized by legal fees, witness fees, etc. including hourly rates if applicable.
- There is a **\$40,000 limit on all intervening parties combined in a single proceeding.**
- Awards are based on the following considerations:
  - The costs are reasonable and would constitute a significant financial hardship to the intervenor
  - The intervenor’s participation materially contributed to the decision rendered by the commission in the proceeding
  - The recommendations of the intervenor differed materially from testimony and exhibits of the commission staff
  - The intervenor’s testimony and participation addressed issues of concern to the general body of utility users or consumers
- Awarded compensation is paid by the utility involved in the proceeding and payments are an allowable business expense in the pending rate case. If the proceeding is not a rate case, they are an allowable business expense in the utility’s next rate case. Expenses are chargeable to the class of customers represented by the qualifying intervenor.

# Michigan

## Program Highlights

Michigan has **the only program that is independent of its state commission** (Michigan Public Service Commission)

The Utility Consumer Participation Board (“UCPB” or “Board”) is a five-member board appointed by the governor. The Board oversees a Utility Consumer Representation Fund (the “Fund”) to disperse reimbursement payments to public interest intervenors.

- Available in proceedings of the Commission involving energy utilities that apply to the Commission for the initiation of cost recovery proceedings.
- Available to nonprofit organizations or units of local government. No individual interests can apply.
- The program has two parts:
  - \$1 million of the program’s funds goes to the Attorney General’s office who advocates on behalf of the interest of Michigan utility customers in general
  - \$750,000 goes to the UCPB to distribute to specific interest groups to advocate on behalf of residential customer groups
  - \$37,500 is set aside for administrative costs of the program
- Grants are determined and awarded by the Board at regular Board meetings, **at the outset of a proceeding.**
- There are no statutory limits on the amount of compensation that can be paid to an intervenor.
- Each energy utility that has applied to the Commission for initiation of a cost recovery proceeding pays into the fund. Energy utilities organized as cooperative corporations are excluded. The amount paid by each utility is prorated based on the number of total and residential customers.
- Payments made by the utilities are considered operating expenses of the utility.
- Grant recipients are required to file a report with the Board within 90 days of year-end. The Board and the Attorney General both file annual reports.



# Minnesota

## Program Highlights

According to the Minnesota Public Utilities Commission (“MPUC”), they have had only three requests for intervenor compensation since 2009, with only one granted.

In the years from 2005-2009, intervenor compensation was more common, but the statute was amended in 2007 to reduce the program.

Previously, intervenor compensation could be requested up front, but now it is requested at the end of the proceeding.

- Available **only in rate cases**.
- Request **after the rate case proceeding**. There is no Notice of Intent or pre-filing required.
- Compensation refers to reasonable fees for attorneys and expert witnesses and other reasonable costs.
- Available to a nonprofit organization or individual granted formal intervenor status
- Compensation may not exceed **\$50,000 for a single intervenor in a proceeding**.
- Eligibility requirements include:
  - The intervenor has materially assisted the commission’s deliberation
  - A lack of compensation would present a financial hardship
- In providing financial hardship, an intervenor must present financial information including revenues, expenses and balance sheets, as well as the ratio between the costs of intervention and the intervenor’s unrestricted funds. An intervenor may also have to describe why additional organizational funds cannot be used.
- There are no regular reports or audits done on the program, and no metrics by which the success of the program is measured.

## Oregon Program Highlights

HB2475 was recently passed and will be effective January 1, 2022. Pertaining to the intervenor funding program, this law **creates an aggregate funding limit of \$500,000 annually for awards.**

The law also more narrowly defines the organizations that can receive financial assistance under agreements to those 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**

- Available in proceedings of a utility providing electric or gas service.
- **Grants are awarded** through written agreements between a utility and an intervenor.
- In administering an agreement, the commission through rule or order determines
  - The amount of financial assistance and the manner in which it will be distributed.
  - More than one utility or organization may join in a single agreement
  - Any agreement must be approved by the commission before any financial assistance can be provided
  - Financial assistance can only be provided to organizations that represent broad customer interests
- The new law will also **require the OPUC to file a report** to the interim committees of the Legislative Assembly related to energy, no later than September 15, 2025, discussing the implementation and impacts of the amendments related to the types of organizations eligible to receive funding. The report is to identify proceedings for which the organization received assistance, the amount received, the issues raised by the organizations and the outcome of each such proceeding.

## Wisconsin Program Highlights

Wisconsin’s program is **divided into two parts** – one part is for traditional intervenor compensation applied for in individual proceedings.

The second part is a legislated grant with the Citizens Utility Board of Wisconsin (“CUB”). CUB is a private, nonprofit organization that advocates for residential, small commercial and small industrial energy customers. Under a new funding model passed in 2021, they are awarded up to \$900,000 for their intervention in cases. The costs are generally assessed to investor-owned electric and natural gas public utilities and are appropriated through the legislature.

- Available in any proceedings before the Commission involving public utilities.
- Compensation refers to reasonable attorney fees, expert witness fees, and other reasonable costs of preparation.
- Applicants must show:
  - They are a customer of the utility that is the subject of the proceeding or someone who may be materially affected by the outcome
  - Significant financial hardship without compensation
  - Interest must be represented for a fair determination of the proceeding
  - Someone granted party status
- Intervenors submit their applications at the **beginning of the proceeding** and the commission issues an order on the amount of the award. The intervenor submits a claim after the proceeding and payment is made. The commission has authority to rescind the award at any time or deny payment.
- An intervenor may apply for supplementary compensation if it under-estimated its cost of participation or feels additional funds would improve its ability to contribute to the proceeding.
- There are no statutory limits on the amount of compensation that can be paid to a single intervenor but there is an **annual limit** for all intervenor funding, which is **\$542,500** for fiscal year 2022.
- There are no legislative funds allocated for the administrative of the program.

# Washington Program Highlights

While this is a new program, there are a few features that are not seen in existing state programs.

Legislation was passed and is effective July 25, 2021. A policy statement was issued by the Washington Utilities and Transportation Commission (“UTC”) on Participatory Funding for Regulatory Proceedings in Docket No. U-210595 on November 19, 2021, to give some initial guidance in implementing the program.

The following characteristics are provided per the policy statement for the first year of the program.

- Available in electric and gas rate proceedings.
- **The program requires prioritization for funding for organizations representing highly impacted communities and vulnerable populations.**
- Eligibility will be limited to non-profit organizations that represent broad customer interests in regulatory proceedings and excludes government entities.
- The program will share characteristics primarily related to Oregon’s program, where utilities will enter into agreements with intervenors to provide grants.
- **Interim funding will be available** only for organizations representing highly impacted communities and vulnerable populations and will require demonstrating a financial need. It will only be allowed for expenses incurred.
- The UTC has not provided any specific eligibility criteria at this time, as it does not want to limit the very groups the program is intended to encourage participation from.
- Reasonable Costs.
- The funding will be capped at 0.1% of utility operating revenues but no more than \$300,000 per utility for gas and electric operations combined.
- **At least 1/3 of the available funding per utility will be reserved specifically for use by organizations representing vulnerable populations and highly impacted communities** and, at least for the first year of the program, may be used for the purposes of conducting outreach and developing awareness of participation opportunities.
- They intend to **measure the program’s success** through surveys and feedback.

# Illinois

## Program Highlights

A Consumer Intervenor Compensation Fund will be created by the Climate and Equitable Jobs Act

Effective December 17, 2021

Will **use a third-party administrator, independent of the commission, to administer the fund and to recommend awards under the program.** Awards will then be submitted to the Commission for approval.

- Available to Consumer Interest Representatives:
  - Residential utility customers or group of residential utility customers represented by a nonprofit organization or group registered with the Illinois Attorney General under the Solicitation of Charity Act
  - Representatives of nonprofit groups or organizations whose membership is limited to residential utility customers
  - Representatives of nonprofit groups or organizations whose membership includes Illinois residents and that **address the community, economic, environmental or social welfare of Illinois residents**, except government agencies or intervenors specifically authorized by Illinois law to participate in Commission proceedings on behalf of Illinois customers
- Each utility that files for an increase in rates will deposit ½ of the rate case attorney and expert expense allowed by the commission, but not to exceed \$500,000, into the fund within 35 days of the date of the Commission’s final order in the rate case.
- Electric and gas public utilities shall contribute to the fund within 60 days of the effective date of this legislation, based on its number of retail customers.
- Eligibility should be based on:
  - If participation creates a financial hardship to the intervenor without compensation
  - Whether the Commission adopted a material recommendation related to a significant issue in the docket.
- Requests must be made within 30 days of the Commission’s final order.



## Active / Pending / Defeated Legislation

## Other Legislation

The following represent states that have attempted or are attempting to implement or revise intervenor compensation programs:

- **California** **Inactive / Dead**

In 2017, **SB520** was introduced during the 2017/18 session that would have established a mechanism to provide compensation for participation in processes of the Independent System Operator (ISO) related to proceedings concerning transmission planning, the transmission access charge, energy markets, and regionalization. The bill died due to inactivity.

- **Hawaii** **Defeated**

**HB805 HD1** was introduced in 2017 to establish a program to provide compensation to intervenors that would appropriate the necessary funds but was not passed.

**SB2733** was introduced in 2020 to create an intervenor compensation program modeled after the California and other programs and was sent to committee but has not passed.

No bill has been introduced in the 2021 session.

- **Illinois** **Rolled in to new bill and passed**

**HB2619** was introduced in February 2021 proposing the creation of the Public Utilities Intervenor Compensation Act. It would create the Illinois Commerce Commission Intervenor Compensation Fund and would award grants. It was referred to the Rules Committee in March 2021.

**SB2295**, the Senate version of the bill, was referred to Assignments in April 2021.

- **Minnesota** **Pending**

**HF1289** was introduced in February 2021 with proposed changes to the current program. It proposes expanding the types of proceedings in which intervenor compensation can be applied for to all proceedings before the PUC (vs just rate cases). It would also expand eligibility to tribal nations, put caps on the awards and ensure strict qualifications for applicants. Was referred to Climate and Energy Finance and Policy committee. The Senate version is **SF1621**.

- **New York** **Pending**

Assembly bill **A873A** was pre-filed in January 2021 relating to utility intervenor reimbursements and establishing the utility intervenor account. It is currently in Assembly Committee.

The Senate version, **S3034A** was introduced in January 2021 and has passed the Senate.

- **Virginia** **Inactive / Dead**

Senate bill No. **1115** was introduced in 2018 to establish an intervenor compensation process. The bill was referred to Committee on Commerce and Labor and was passed by indefinitely in January 2019.

- **Montana** **Repealed**

Intervenor compensation was included in the administrative code related to PURPA proceedings but was repealed in 1983.



## Intervenor Case Studies



# Michelle Hubbard

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## Location

Boston, MA

## Education

B.B.A., Accounting, Texas A&M University, College Station

## Certifications

Certified Public Accountant (CPA)

## Professional Affiliations

American Institute of Certified Public Accountants

**Ms. Hubbard has a B.B.A. in Accounting and has been working in the utility industry for 27 years, starting as an employee of a natural gas distribution company in various accounting roles before starting a career as a regulatory accounting consultant.**

Ms. Hubbard has held positions in industry as well as in consulting firms where she has performed services for clients in the natural gas midstream, distribution and electric environments in multiple states and at the federal level. As part of the power, renewables and utilities practice, Ms. Hubbard applies her expertise in pipeline and utility regulation, rate-setting, and financial analysis to a variety of power-related projects.

As an accountant, Ms. Hubbard specializes in the construction of complex financial models and working with large datasets. As a consultant, she has worked on a wide variety of projects in the utility industry performing revenue requirement calculations, cost of service allocations and cost studies, rate case preparation and intervention, regulatory compliance and other regulatory matters at state levels, and more recently, at the federal level where she has represented intervenors in Section 4 rate cases before the FERC.

She has extensive experience in financial analysis and compliance issues, including the preparation of documentation in support of litigation and regulatory filings. She specializes in cost of service, corporate costs and the allocation of joint and common costs. She has provided financial analysis and support in gas utility rate proceedings in many state jurisdictions and at the FERC level. She also performs general accounting, analysis, litigation support and

contract compliance audits.

Representative experience includes:

- Supported intervenor interests in NGA Section 4 rate cases before the FERC by providing analysis, performing discovery, supporting settlement positions and assisting with testimony.
- Provided support for the National Grid Massachusetts Management Audit in the areas of IT program management and the EV charging program.
- Participated on a project researching the link between utility decoupling programs and energy efficiency metrics for EnergyNorth's natural gas utility.
- Supported many regulated utilities through the audit process by the Texas Railroad Commission and performed an internal franchise tax audit for a gas LDC.
- Performed agreed-upon procedures audits for a Texas state agency for the remittance of royalties for the State Power Program.
- Worked on a team that performed management audits of several school districts in the state of Texas, doing analyses, performing interviews and providing recommendations for improvements in processes.
- Provided litigation support with her analysis and financial modeling skills.
- While working in various accounting roles at a natural gas distribution company, serving as their budget supervisor, responsible for the operating and capital budgeting processes for the multi-million-dollar LDC.



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