



NATIONAL ENERGY & UTILITY AFFORDABILITY COALITION
STATE LEVEL ADVOCACY: INTERACTION
WITH PUCS & BEYOND

JUNE 26, 2017

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INTERVENOR FUNDING: A SOLUTION FOR LOW-INCOME ADVOCATES TO PARTICIPATE IN IMPORTANT STATE UTILITY COMMISSION PROCEEDINGS

- Advocates for low-income consumers often lack needed staff, funding and expertise to participate in state utility regulatory proceedings, despite their critical importance.
 - Eight states feature laws that allow public interest advocates to be financially reimbursed for some costs associated with intervening before state utility regulators.
 - Outside of California, most existing state intervenor funding programs are limited and inadequate.
 - Using California as a successful model, advocate to expand, improve or initiate intervenor programs in your state.
 - There are no legal barriers for non-profits to advocate on behalf of consumers at state utility regulatory commissions.
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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.
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THE UTILITY REFORM NETWORK IN CALIFORNIA RECEIVED MORE THAN \$5 MILLION—OR 92% OF TOTAL REVENUES—FROM INTERVENOR COMP IN 2014

Form 990 OMB No. 1545-0047

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.
▶ Information about Form 990 and its instructions is at www.irs.gov/form990.

2014
Open to Public Inspection

A For the **2014** calendar year, or tax year beginning **7/01**, 2014, and ending **6/30**, 2015

B Check if applicable:
 Address change
 Name change
 Initial return
 Final return/terminated
 Amended return
 Application pending

C THE UTILITY REFORM NETWORK (TURN)
268 BUSH STREET #3933
SAN FRANCISCO, CA 94104

D Employer identification number
23-7351081

E Telephone number
415-929-8876

G Gross receipts \$ **5,493,594.**

F Name and address of principal officer
SAME AS C ABOVE

I Tax-exempt status: 501(c)(3) 501(c) () * (insert no.) 4947(a)(1) or 527

J Website: ▶ [HTTP://WWW.TURN.ORG](http://WWW.TURN.ORG)

K Form of organization: Corporation Trust Association Other ▶ **L** Year of formation: **1973** **M** State of legal domicile: **CA**

Part I Summary

1 Briefly describe the organization's mission or most significant activities: TURN IS A STATEWIDE CONSUMER ORGANIZATION REPRESENTING UTILITY RATEPAYERS IN REGULATORY, LEGISLATIVE AND JUDICIAL PROCEEDINGS BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) AND OTHER FORUMS. THE ORGANIZATION ALSO PERFORMS A WIDE RANGE OF CONSUMER SERVICES

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets.

3 Number of voting members of the governing body (Part VI, line 1a)	3	10
4 Number of independent voting members of the governing body (Part VI, line 1b)	4	10
5 Total number of individuals employed in calendar year 2014 (Part V, line 2a)	5	17
6 Total number of volunteers (estimate if necessary)	6	0
7a Total unrelated business revenue from Part VIII, column (C), line 12	7a	0.
7b Net unrelated business taxable income from Form 990-T, line 34	7b	0.

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1h)	735,310.	430,691.
9 Program service revenue (Part VIII, line 2g)	2,256,587.	5,056,935.
10 Investment income (Part VIII, column (A), lines 3, 4, and 5)	6,485.	5,968.
11 Other revenue (Part VIII, column (A), lines 5, 6, 9c, 10c, and 11e)	-18,590.	
12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	2,979,792.	5,493,594.
13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)		
14 Benefits paid to or for members (Part IX, column (A), line 4)		
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	1,987,904.	2,069,247.
16a Professional fundraising fees (Part IX, column (A), line 11e)	35,460.	41,370.
b Total fundraising expenses (Part IX, column (A), line 25)		334,107.
17 Other expenses (Part IX, column (A), lines 11a and 11f-24e)	1,936,618.	2,325,416.
18 Total expenses. Add lines 13-17 (must equal line 25)	3,959,982.	4,436,033.
19 Revenue less expenses. Subtract line 18 from line 12	-980,190.	1,057,561.
20 Total assets (Part X, line 16)	Beginning of Current Year 4,842,522.	End of Year 6,361,914.
21 Total liabilities (Part X, line 26)	1,550,436.	2,012,854.
22 Net assets or fund balances. Subtract line 21 from line 20	3,292,086.	4,349,060.



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

COLORADO REVISED STATUTES § 40-6.5-105

TITLE 40. UTILITIES
PUBLIC UTILITIES
ARTICLE 6.5. OFFICE OF CONSUMER COUNSEL

C.R.S. 40-6.5-105 (2016)

40-6.5-105. Intervenors other than the office of consumer counsel

(1) If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors, other than the office of consumer counsel, and the amounts thereof shall be based on the following considerations:

- (a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel;
 - (b) The testimony and participation of other intervenors must have addressed issues of concern to the general body of users or consumers concerning, directly or indirectly, rates or charges;
 - (c) The testimony and participation of other intervenors must have materially assisted the commission in rendering its decision;
 - (d) The expenses of other intervenors must be reasonable in amount;
 - (e) The testimony and participation of other intervenors must be of significant quality;
 - (f) The participation of other intervenors must be active during the proceeding and not merely an appearance for purposes of establishing legal standing; and
 - (g) The payment of expenses of other intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.
- (2) The commission shall promptly report the award of any intervenors' expenses to the executive director of the department of regulatory agencies.



IDAHO INTERVENOR COMPENSATION

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 6
PROCEDURE BEFORE COMMISSION AND IN COURTS

61-617A. AWARD OF COSTS OF INTERVENTION. (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding three million five hundred thousand dollars (\$3,500,000) to pay all or a portion of the costs of one (1) or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of forty thousand dollars (\$40,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

(a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and

(b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and

(c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and

(d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.



MAINE INTERVENOR COMPENSATION

◀ §1309

Title 35-A: PUBLIC UTILITIES
Part 1: PUBLIC UTILITIES COMMISSION
Chapter 13: PROCEDURE

§1311 ▶

§1310. Funding of intervenors by the commission

1. Intervenor funding. Intervenor funding may be provided as follows.

A. In any commission proceeding in which standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., are implemented, the commission may order the utility to compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that:

- (1) The position of the intervenor is not adequately represented by the Office of the Public Advocate or the Public Utilities Commission staff;
- (2) The intervenor substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the commission proceeding, except that, if no commission advocacy staff is appointed to a proceeding, the intervenor must be likely to contribute substantially to the conduct of the commission proceeding and to assist in the resolution of the issues raised in the proceeding; and
- (3) Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor. [1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF).]

B. In any proceeding in which the commission does not implement standards under the United States Public Utilities Regulatory Policies Act of 1978, United States Code, Title 16, Section 2601, et seq., the commission may compensate the intervenor for reasonable attorney's fees, expert witness fees and other reasonable costs incurred in preparation and advocacy of the intervenor's position whenever the commission finds that requirements of paragraph A, subparagraphs (1) to (3), are satisfied. Compensation may be provided from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds. [1989, c. 281, (NEW).]

[1997, c. 691, §4 (AMD); 1997, c. 691, §10 (AFF) .]

2. Determination of eligibility. A determination that an intervenor is eligible for an award of compensation pending the outcome of the proceeding shall be made by the commission at the earliest practicable time in the commission proceeding.



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 can disburse reimbursement payments to public interest intervenors.



MINNESOTA STATUTE § 216B.16(10)

Subd. 10. Intervenor compensation. (a) A nonprofit organization or an individual granted formal intervenor status by the commission is eligible to receive compensation.

(b) The commission may order a utility to compensate all or part of an eligible intervenor's reasonable costs of participation in a general rate case that comes before the commission when the commission finds that the intervenor has materially assisted the commission's deliberation and when a lack of compensation would present financial hardship to the intervenor. Compensation may not exceed \$50,000 for a single intervenor in any proceeding. For the purpose of this subdivision, "materially assisted" means that the intervenor's participation and presentation was useful and seriously considered, or otherwise substantially contributed to the commission's deliberations in the proceeding.

(c) In determining whether an intervenor has materially assisted the commission's deliberation, the commission must consider, among other factors, whether:

- (1) the intervenor represented an interest that would not otherwise have been adequately represented;
- (2) the evidence or arguments presented or the positions taken by the intervenor were an important factor in producing a fair decision;
- (3) the intervenor's position promoted a public purpose or policy;
- (4) the evidence presented, arguments made, issues raised, or positions taken by the intervenor would not have been a part of the record without the intervenor's participation; and
- (5) the administrative law judge or the commission adopted, in whole or in part, a position advocated by the intervenor.

(d) In determining whether the absence of compensation would present financial hardship to the intervenor, the commission must consider:

- (1) whether the costs presented in the intervenor's claim reflect reasonable fees for attorneys and expert witnesses and other reasonable costs; and
- (2) the ratio between the costs of intervention and the intervenor's unrestricted funds.

NEW HAMPSHIRE STATUTE § 365:38-A

TITLE XXXIV PUBLIC UTILITIES

CHAPTER 365 COMPLAINTS TO, AND PROCEEDINGS BEFORE, THE COMMISSION

Reparations, Fees and Costs

Section 365:38-a

365:38-a Proceeding Costs. – The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest. For purposes of this section, other parties shall be defined as retail customers that are subject to the rates of the utility and who demonstrate financial hardship; other parties shall not include New Hampshire municipalities. Recovery by other parties shall be deemed to be in the public interest when, in any commission proceeding, the other party substantially contributes to the adoption by the commission, in whole or in part, of a position advocated by the other party in that proceeding, or in a judicial review of that proceeding. Another party shall not recover more than \$10,000 from any utility for any single proceeding. The commission may allow recovery of less than \$10,000 depending upon the scope of the proceeding. The utility shall pay the other party an award of costs if such award is granted by the commission in accordance with the procedures and requirements of the commission and the award is subsequently approved by the governor and council. The utility shall not be liable for any award of costs except in accordance with the procedures and requirements of the commission. If the commission proceeding involves more than one utility, the liability of each utility for the award shall be determined by dividing the amount of the award among the utilities in a manner approved by the commission. If an award of costs is granted in a proceeding involving a change in a utility's rates, the entire amount of the award shall be recovered by the utility in that proceeding. If an award of costs is granted in a proceeding other than one involving a change in a utility's rates, the entire amount of the award shall be immediately recovered by the utility through measures approved on a timely basis by the commission.



WISCONSIN STATUTE § 196.31

196.31 Intervenor financing.

- (1) In any proceeding before the commission, the commission shall compensate any participant in the proceeding who is not a public utility, for some or all of the reasonable costs of participation in the proceeding if the commission finds that:
- (a) The participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation; or
 - (b) The participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.
- (1m) The commission shall compensate any consumer group or consumer representative for all reasonable costs of participating in a hearing under s. 196.198.
- (2) Compensation granted under this section shall be paid from the appropriation under s. 20.155 (1) (j) and shall be assessed under s. 196.85 (1), except that, if the commission finds that the participation for which compensation is granted relates more to a general issue of utility regulation rather than to an issue arising from a single proceeding, the cost of the compensation may be assessed under s. 196.85 (2). Any payment by a public utility for compensation under this section assessed under s. 196.85 (1) or (2) shall be credited to the appropriation under s. 20.155 (1) (j).
- (2m) From the appropriation under s. 20.155 (1) (j), the commission may make grants that, in the aggregate, do not exceed an annual total of \$300,000 to one or more nonstock, nonprofit corporations that are described under section 501 (c) (3) of the Internal Revenue Code, and that have a history of advocating at the commission on behalf of ratepayers of this state, for the purpose of offsetting the general expenses of the corporations, including salary, benefit, rent, and utility expenses. The commission may impose conditions on grants made under this subsection and may revoke a grant if the commission finds that such a condition is not being met.



FEDERAL ENERGY REGULATORY COMMISSION DOCKET NO. RM16-9 WOULD CREATE INTERVENOR FUNDING FOR THE PUBLIC INTEREST

UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Petition To Initiate A Rulemaking To Establish The Office Of Public Participation As Established By Congress And To Fund Its Work

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure¹, the undersigned organizations hereby petition FERC to implement 16 USC § 825q-1 by initiating a rulemaking to carry out the instructions from Congress to establish the Office of Public Participation and fund its work.

In 1978 Congress initiated sweeping changes to the Federal Power Act when it passed Public Law 95-617, the "Public Utility Regulatory Policies Act of 1978" (PURPA). Title II ("Certain Federal Energy Regulatory Commission and Department of Energy Authorities"), Section 212 ("Public participation before Federal Energy Regulatory Commission") of PURPA ordered the creation of an Office of Public Participation at FERC. The full text follows:

REGIONAL TRANSMISSION ORGANIZATION INTERVENOR FUNDING PROPOSAL IN CALIFORNIA

SENATE BILL

No. 520

Introduced by Senator Mitchell

February 16, 2017

An act to add Part 1.5 (commencing with Section 2600) to Division 1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 520, as introduced, Mitchell. Electricity: intervenor funding.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities. Existing law requires the PUC to award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding of the PUC involving an electrical, gas, water, or telephone corporation to a customer who complies with specified procedures when the customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the PUC's order or decision and where participation or intervention without an award of fees or costs imposes a significant financial hardship.

This bill would establish a mechanism to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of participation in processes of the Independent System Operator (ISO), proceedings of the Federal Energy Regulatory Commission (FERC) that effect California's environment and consumers, and certain proceedings at the State Energy Resources Conservation and Development Commission (Energy Commission). The bill would require an organization intending to seek compensation to submit an annual notice of intent and eligibility to the Energy Commission containing specified information. The Energy Commission would be required to timely issue a finding as to whether the organization is an eligible group, as defined, that may file for

ADDITIONAL ADVOCACY THROUGH LIHEAP & WAP

- State LIHEAP program administrators can allocate as much as 0.08% or \$35,000 (whichever is greater) of funds to “identify, develop, and demonstrate leveraging programs.”
 - Such leveraging programs can be used by LIHEAP and Weatherization Assistance Program recipients to advocate for system benefits charges or other rate-funded initiatives through state utility regulatory proceedings.

