

Appendix A: State Intervenor Funding Research

1. Limitations on types of proceedings – What types of proceedings (adjudication, rulemaking, petitions, tariff filings) are eligible for funding? Are there limitations or can parties receive funding for all types of proceedings before the commission?

California	<ul style="list-style-type: none"> • Electric, gas, water, and telephone.
Colorado	<ul style="list-style-type: none"> • Must address issues of concern to the “general body of users or consumers” involving “rates and charges.”
Hawaii	<ul style="list-style-type: none"> • Legislation includes no limitation.
Idaho	<ul style="list-style-type: none"> • Any proceeding before commission.
Maine	<ul style="list-style-type: none"> • Any proceeding before commission.
Michigan	<ul style="list-style-type: none"> • Any proceeding; intervenors must coordinate with Attorney General. Grants reviewed, disbursed, and monitored by a Utility Consumer Participation Board.
New Hampshire	<ul style="list-style-type: none"> • No limitation on type of proceeding.
New York	<ul style="list-style-type: none"> • Broad intervenor compensation bill passed state Senate, still before Assembly and subject to revision (as of December 2020). The bill intends to amend the existing public service law and state finance law to include utility intervenor reimbursement and to establish a utility intervenor account (where funds for compensation/reimbursement will come from). • Existing NY statutes provide intervenor compensation in proceedings regarding the siting of major transmission facilities.
Oregon	<ul style="list-style-type: none"> • Electricity or natural gas matters only. Or. Rev. Stat. § 757.072.
Virginia	<ul style="list-style-type: none"> • In 2019, the bill to establish an intervenor funding mechanism passed the state Senate commerce committee but has not become law. The bill establishes a process for intervenors to be compensated for participation in a utility proceeding if the commission finds the intervenors participation led to a decision in the proceeding, caused financial hardship, and presentation of material that would not have been represented without the intervenor.
West Virginia	<ul style="list-style-type: none"> • West Virginia provides electric customer reimbursement for intervention in PURPA-related commission matters but no recent activity was found.
Wisconsin	<ul style="list-style-type: none"> • No limitation. Active since 1983.

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2. Eligibility – how do states determine eligibility for funding? Is eligibility limited by:
- a. Need? (Do parties have to prove financial hardship?)
 - b. Organizational mission? (Do parties have to provide organizational bylaws/mission statements?)
 - c. Interests represented? (e.g., no funding for industrial groups or environmentally focused groups)

California	<ul style="list-style-type: none"> • Party – Must be a party to a commission proceeding; must prove (1) significant hardship and (2) status as a “customer” of a utility or eligible local government entity (limited utility proceedings stemming from catastrophic events). • Customer – Three categories of customer: <ul style="list-style-type: none"> <i>Category 1:</i> an actual customer whose self-interest in the proceeding represents the broader interests of at least some other customers (supporting documents must include a copy of the customer’s utility bill); <i>Category 2:</i> customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer’s views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group (supporting documents must identify the residential customer(s) being represented and provide authorization from at least one customer); <i>Category 3:</i> representative of an organization authorized by its articles of incorporation or bylaws to represent the interests of residential customers or represent small commercial customer receiving bundled electric service (supporting documentation for this customer category must include current copies of the articles of incorporation or bylaws or citation to previously filed documents). Organizations of that represent residential customers with concerns for the environment may also qualify in this category even if the above requirement is not technically met in the bylaws. • Significant financial hardship – Category 1 and 2 customers apply an “undue hardship” test and must certify that the customer cannot afford to pay the costs of effective participation and submit supporting financial documentation (disclose the customer(s)’s gross and net monthly income, monthly expenses, cash and assets, including equity in real estate, and any other relevant financial information); Category 3 customers apply a “comparison test” and must certify that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation and provide supporting analysis. Eligible local government must show why the costs of participation would impose significant financial hardship.
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	<ul style="list-style-type: none"> • Notice of Intent to Claim Compensation – Must prequalify eligibility through Notice of Intent to Claim Compensation – must be filed at the beginning of each proceeding. Notice of Intent must include a showing of customer/local government entity status and either include a showing of significant financial hardship or cite to the decision indicating the party met their burden of proving they have a significant financial hardship in a prior proceeding that was filed within a year prior to the filing of the docket at issue (acts as a rebuttable presumption that you meet the burden). <p>Notice of Intent must also include the party’s scope of anticipated participation, list of issues the party expects to address, explanation of how it plans to avoid duplication of effort with other parties, and an estimated budget broken down by participant (attorney, expert, or advocate) with estimated hours and rates but final request does not have to match these estimates.</p>
Colorado	<ul style="list-style-type: none"> • No demonstration of need. • No direct competitor utility intervenor can be awarded costs.
Hawaii	<ul style="list-style-type: none"> • Must prove significant financial hardship.
Idaho	<ul style="list-style-type: none"> • No utility direct competitor intervenors may be awarded.
Maine	<ul style="list-style-type: none"> • Must prove substantial financial hardship and include financials. • Silent on organizational mission. • Multiple intervenors with similar issues must consolidate efforts.
Michigan	<ul style="list-style-type: none"> • Michigan-based nonprofit organizations or local units of government are eligible to apply. • Applicants must represent the interests of residential utility customers. An application which primarily benefits the applicant or a service provided or administered by the applicant will not be considered. An application will not be considered if one of the organization's primary interests is the welfare of a utility or its investors or employees, the welfare of businesses, or the welfare of corporate owned or operated farms. Ownership or securities by a nonprofit organization or its members will not disqualify an application. Funds cannot be used in proceedings in which the utility is organized as a cooperative corporation.
New Hampshire	<ul style="list-style-type: none"> • Must prove financial hardship; cannot be a municipality.

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New York	<ul style="list-style-type: none"> • N/A. Bill passed state Senate, still before Assembly and subject to revision.
Oregon	<ul style="list-style-type: none"> • No financial test specified. • Funds available to the Citizens' Utility Board or any qualified nonprofit whose members will be affected by the proceeding which has demonstrated ability to contribute strongly to consideration of issues. Intervenors may apply for prequalification or for qualification during proceeding.
Virginia	<ul style="list-style-type: none"> • N/A. Bill stalled in Senate.
Wisconsin	<ul style="list-style-type: none"> • Intervenors must apply before commencing their action.

- 3. Funding amounts – are funding amounts limited or are there limitations on amounts awarded, assuming all other requirements are met?**
- a. Limited per party?**
 - b. Total funding limitations? (Is there just one bucket of funds per utility that is available until all funds are dispersed?)**

California	<ul style="list-style-type: none"> • No limit.
Colorado	<ul style="list-style-type: none"> • No limit; commission decides appropriateness.
Hawaii	<ul style="list-style-type: none"> • Legislation gives no limit.
Idaho	<ul style="list-style-type: none"> • Total awardable to all intervenors capped at \$40K.
Maine	<ul style="list-style-type: none"> • No limit.
Michigan	<ul style="list-style-type: none"> • The Utility Consumer Representation Fund is funded through contributions made by certain Michigan utility companies.
New Hampshire	<ul style="list-style-type: none"> • \$10K cap per party per utility. No indication of funding limitations. Where more than one utility is involved costs may be split among them.
New York	<ul style="list-style-type: none"> • Bill passed state Senate; still before Assembly and subject to revision (as of December 2020).
Oregon	<ul style="list-style-type: none"> • Did not find limitations; current spreadsheet of budgeted funds and expenditures indicates the pot is several hundred thousand dollars.

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Virginia	<ul style="list-style-type: none"> • N/A. Bill apparently stalled in Senate.
Wisconsin	<ul style="list-style-type: none"> • No limits on reimbursements indicated. • Funds flow from large pool of assessments to utilities based on actual intervenor costs.

4. Timing of funding – Do parties receive funding up-front or only after a decision is issued?

California	<ul style="list-style-type: none"> • After. • Party files a Claim for Compensation, ALJ reviews, commission makes final decision.
Colorado	<ul style="list-style-type: none"> • After.
Hawaii	<ul style="list-style-type: none"> • Legislation says after.
Idaho	<ul style="list-style-type: none"> • After.
Maine	<ul style="list-style-type: none"> • After.
Michigan	<ul style="list-style-type: none"> • In advance. • In Michigan’s experience, funding for consumer advocacy is the only way to get consistent and beneficial input from intervenors on behalf of utility customers because of the complex nature of the subject matter and the cost of hiring experts. Michigan has found that an after-the-fact funding system creates hardship for most intervenors.
New Hampshire	<ul style="list-style-type: none"> • After. • Commission approves and must also then be approved “by the Governor and council” to be awarded. Council is Executive Council of New Hampshire, which advises and provides a check on the power of the Governor.
New York	<ul style="list-style-type: none"> • Bill passed state Senate; still before Assembly and subject to revision.
Oregon	<ul style="list-style-type: none"> • Before. • Must qualify in advance, either as a certified “prequalified” intervenor for future dockets or on a case-by-case basis.
Virginia	<ul style="list-style-type: none"> • N/A. Bill apparently stalled in Senate.

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Wisconsin	<ul style="list-style-type: none"> • After. • Must qualify before intervening.
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5. Requirements to receive funding - Do parties have to prove “substantial contribution” to a proceeding or provide other proof of contribution to a proceeding before it can receive funding?

a. Other document requirements – Timesheets? Receipts?

California	<ul style="list-style-type: none"> • Yes, must prove substantial contribution and its value both to case and overall to state (the party’s participation will be shown to have substantially assisted the commission in the making of its order or decision because it adopted, in whole or in part, one or more factual contentions, legal contentions, or specific policy or procedural recommendations. A substantial contribution includes evidence or arguments that supports part of the decision, even if the commission does not adopt a party’s position in total); must show how the party collaborated with other intervenors to avoid duplication of effort. • Timesheets and receipts are required.
Colorado	<ul style="list-style-type: none"> • Must have addressed issues of concern to general public or consumers as to rates and charges BUT not an issue otherwise sufficiently addressed by the Office of Consumer Counsel if that Office has appeared. • Must have skillfully enough presented that the commission was swayed in its decision. • Only active intervenors may be awarded, but not those who appeared solely to gain standing.
Hawaii	<ul style="list-style-type: none"> • Legislation says must be a substantial contribution that swayed commission, even if not all of an intervenor’s positions are adopted. • Legislation says intervenor must submit as early as possible in a proceeding a list of issues, budget, estimated costs it intends to ask. At end of proceeding must provide commission with details of actual costs. commission has audit power over intervenor.
Idaho	<ul style="list-style-type: none"> • Legislation does not specify, but applications on file with commission show intervenors must show actual costs and effect on ruling of intervenor action.
Maine	<ul style="list-style-type: none"> • At launch of case must file statement of eligibility for compensation for commission to consider, including that its positions are not likely adequately represented by Staff or public counsel. • After ruling must file proof of costs, uniqueness and strength of its influence on ruling.

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Michigan	<ul style="list-style-type: none"> • Yes, must apply in advance and prove costs, effectiveness, uniqueness and strength of influence on ruling.
New Hampshire	<ul style="list-style-type: none"> • Must substantially contribute to the commission adopting what they propose. • No indication of documents needing to be submitted.
New York	<ul style="list-style-type: none"> • Bill passed state Senate; still before Assembly and subject to revision.
Oregon	<ul style="list-style-type: none"> • Must qualify at commencement of intervention and afterward prove substantial contributions.
Virginia	<ul style="list-style-type: none"> • N/A. Bill apparently stalled in Senate.
Wisconsin	<ul style="list-style-type: none"> • Substantial contribution required.

6. Who pays for the intervenor compensation awards?

California	<ul style="list-style-type: none"> • Ratepayers pay for these awards of intervenor compensation because the California Legislature requires the CPUC to adjust utility rates so that utilities can collect any amounts paid to intervenors. • Typically, only the utility subject to the proceeding is responsible for the payment of intervenor compensation and the utility will increase its rate accordingly to cover any awards paid (this can be done in a variety of ways including as a line item surcharge or tracked and trued-up at the end of the year). However, if the proceeding applies to an entire industry such as a rulemaking, awards of compensation are paid by the CPUC out of ratepayer fees collected by all utilities. For proceedings with more than one utility, the utilities will split the cost of intervenor funding for that proceeding. • Funding awards are allowed as an expense by way of a dollar-for-dollar adjustment to rates immediately upon commission determination of the award so that the amount of the award shall be fully recovered within a year.
Colorado	<ul style="list-style-type: none"> • Appears silent on this.
Hawaii	<ul style="list-style-type: none"> • Legislation says commission will pay from a new intervenor compensation special fund it may direct utilities to deposit into.
Idaho	<ul style="list-style-type: none"> • 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.

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Maine	<ul style="list-style-type: none"> Commission has its own regulatory fund from which it compensates intervenors in matters not involving PURPA-related ratemaking standards. PURPA-related case intervenors are paid by utilities; do not see language on recoverability.
Michigan	<ul style="list-style-type: none"> Residential only. Funding provided through annual assessments to regulated utilities.
New Hampshire	<ul style="list-style-type: none"> For rate cases, company gets to recover any such costs awarded in those rates. For non-rate cases, company can recover through separate commission action.
New York	<ul style="list-style-type: none"> Bill passed state Senate; still before Assembly and subject to revision.
Oregon	<ul style="list-style-type: none"> Could not determine.
Virginia	<ul style="list-style-type: none"> N/A. Bill apparently stalled in Senate.
Wisconsin	<ul style="list-style-type: none"> Unclear; funded from assessments from utilities based only on actual costs of intervenors.

7. Please provide links to state programs or decisions which may be helpful to understand the details of these state programs.

California	<ul style="list-style-type: none"> Intervenor Compensation Program overview: https://www.cpuc.ca.gov/proceedings-and-rulemaking/intervenor-compensation Intervenor Compensation Program Guide: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/icom-materials/updated-icom-program-guide-april-2017.pdf 2013 Audit of program: https://consumercal.org/state-auditor-report-confirms-intervenor-compensation-program-solid-accountable/ Relevant CA Public Utilities Code Sections (§§1801-1812): https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=9.&article=5.
Colorado	<ul style="list-style-type: none"> Colorado Revised Statutes §40-6.5-105: https://law.justia.com/codes/colorado/2018/title-40/public-utilities/article-6.5/section-40-6.5-105/; for 2021 revisions see https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a_sl_477.pdf
Hawaii	<ul style="list-style-type: none"> Legislation link: https://www.capitol.hawaii.gov/session2020/bills/SB2733_.HTM

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Idaho	<ul style="list-style-type: none"> • Enacting legislation is Idaho Public Utility Regulation Title 61 Section 61-617A: https://legislature.idaho.gov/statutesrules/idstat/Title61/T61CH6/SECT61-617A/ • Example intervenor funding applications via commission website search feature: https://puc.idaho.gov/search/search?q=intervenor
Maine	<ul style="list-style-type: none"> • Maine PUC site: https://www.maine.gov/mpuc/index.shtml • Maine PUC Chapter 840 – Intervenor Funding (Word): http://www.maine.gov/sos/cec/rules/65/407/407c840.doc • Statute: http://legislature.maine.gov/statutes/35-A/title35-Asec1310.html
Michigan	<ul style="list-style-type: none"> • Commission site: http://www.michigan.gov/mpsc • Utility Consumer Participation Board Site: https://www.michigan.gov/lara/0,4601,7-154-10573_76244---,00.html • Grant application for intervenors to submit to Board for approval prior to case: https://www.michigan.gov/documents/lara/UCRF_2022_Grant_Application_730969_7.pdf
New Hampshire	<ul style="list-style-type: none"> • PUC site: https://www.puc.nh.gov/index.htm • Law on cost awards: http://www.gencourt.state.nh.us/rsa/html/XXXIV/365/365-38-a.htm
New York	<ul style="list-style-type: none"> • Bill passed state Senate, still before Assembly and subject to revision. • Statute on intervenor funding for transmission siting proceedings: https://casetext.com/regulation/new-york-codes-rules-and-regulations/title-16-department-of-public-service/chapter-i-rules-of-procedure/subchapter-g-certificates-of-environmental-compatibility-and-public-need/part-85-general-procedures/subpart-85-2-procedures-with-respect-to-all-electric-transmission-lines-and-fuel-gas-transmission-lines-10-or-more-miles-long/section-85-24-fund-for-municipal-and-other-parties • Forms to request funding in transmission siting proceedings: https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/a021e67e05b99ead85257687006f393b/\$FILE/Article%20VII%20Form.pdf
Oregon	<ul style="list-style-type: none"> • Intervenor Funding site: https://www.oregon.gov/puc/filing-center/Pages/Intervenor-Funding.aspx • Current Intervenor Funding Agreement with regulated utilities valid through 2022: https://apps.puc.state.or.us/orders/2018ords/18-017.pdf

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Virginia	<ul style="list-style-type: none">• Virginia HB 556 State Corporation Commission: Intervenor Compensation Tracker: https://lis.virginia.gov/cgi-bin/legp604.exe?181%2Bsum%2BHB556
Wisconsin	<ul style="list-style-type: none">• Intervenor compensation site: https://psc.wi.gov/Pages/Programs/IntervenorComp.aspx• Statute: https://apps.puc.state.or.us/orders/2018ords/18-017.pdf