



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #536

Intervenor Compensation (Public Service Commission)

[LFB 2017-19 Budget Summary: Page 378, #3]

CURRENT LAW

The Public Service Commission's (PSC) intervenor financing appropriation provides financial assistance for organizations and individuals who participate in PSC proceedings, such as rate cases. To receive funding, an organization or individual must first request and be granted intervenor status in a specific proceeding. As a party to the proceeding, the intervenor is required to appear at technical hearings and be available for cross-examination by other parties in the proceeding. In addition, the intervenor may offer testimony and evidence. Compensation is limited to expenses related to participation in the proceeding and includes:

- attorney fees;
- expert witness fees;
- cost of clerical services;
- preparation of studies, displays, and exhibits;
- travel and subsistence costs; and
- other costs that are incurred and are associated with the intervention.

Intervenors must submit claims for compensation, including an itemized statement of expenses, to the PSC within 90 days of completing their participation in the proceeding. The PSC may audit and examine any books, documents, papers, and records of an intervenor related to a claim. Intervenor financing is funded through assessments on utilities, typically the utility involved in the proceeding, and budgeted as program revenue (PR).

GOVERNOR

Increase the authorization for the intervenor compensation appropriation by \$371,300 PR annually.

DISCUSSION POINTS

1. Wisconsin public utilities must seek PSC approval before commencing certain actions, such as setting new rates, issuing stocks and bonds, and undertaking major construction projects. The PSC conducts its regulatory hearings on a quasi-judicial basis and develops a factual record on which to base its decisions. A complete factual record requires information both from the utility's experts and from individuals and organizations affected by the utility's actions. Any person adversely affected by a Commission decision may petition for judicial review, but Commission decisions based on a complete factual record are less likely to be subject to judicial challenge. Intervenor balance PSC proceedings by allowing affected parties without the ability or resources to challenge the information presented by public utilities to do so. This helps ensure that PSC decisions are based on a complete factual record.

2. Parties are not allowed to participate in PSC proceedings unless they request to intervene. Before receiving intervenor status, parties must show that their substantial interests may be affected or that their participation in the PSC proceeding "will promote the proper disposition of the issues to be determined." Compensation is not paid for all expenses incurred by intervenors, but is limited to the compensable costs listed under the "Current Law" section of this paper. PSC staff review each application for compensation, may request additional information, and may recommend that the Commission approve, in whole or part, or deny the request. The PSC may audit the books, papers, documents, and records supporting requests for compensation.

3. The intervenor compensation program was created in 1983 and has provided assistance to individuals and organizations intervening in PSC utility rate cases and other PSC decisions since then. In 2010, the program was amended to also provide annual grants to a nonstock, nonprofit corporation with a history of advocating on behalf of residential ratepayers for affordable utility rates. Grants could be used to offset the general expenses of the corporation, including salary, benefits, rent, and utility expenses. The annual grant amount was set at \$300,000.

4. The 2015-17 enrolled biennial budget bill included a provision, proposed by the Legislature, to eliminate the authorization for grants to nonprofit corporations and to reduce the compensation rate for consumer groups and consumer representatives from 100% of the cost of participating in a PSC hearing to 50% of that cost. The annual level of the intervenor compensation appropriation was reduced from \$1,042,500 PR to \$371,200 PR. Through partial veto, the Governor removed the Legislature's proposed changes to the intervenor compensation program, but a Governor's veto cannot reverse a funding reduction.

5. Since the Act 55 provision became law, the PSC has paid compensation to intervenors participating in PSC proceedings, but it has not issued any grants to nonprofit advocacy corporations. Compensation requests have not exceeded the program's appropriation level. In 2015-16, the PSC received requests totaling \$262,155 and awarded \$190,400 in compensation. The appropriation's remaining appropriation authority (\$180,800) carried over to 2016-17 due its biennial characterization, and thus far in 2016-17, the PSC has received \$227,000 in compensation requests and approved them all.

6. Intervenor compensation varies between years depending on the number and type of

proceedings, and more intervenor requests occur in years when rate increases of major utilities and large construction projects are before the Commission. For example, the PSC received only six compensation requests in 2015-16, but received 19 requests totaling \$1,152,439 in 2014-15. The PSC approved 15 requests for compensation totaling \$744,439, which would exceed the current appropriation level. The requests were related to 14 PSC dockets:

- rate cases for four of the state's major utilities;
- construction of two high-voltage electric transmission lines;
- Wisconsin Energy's acquisition of Integry's;
- expansion of fuel blend testing and the coal pile at the Oak Creek generating facility;
- a construction project at the Oak Creek and Elm Road generating facilities; and
- construction of an additional power plant at the Riverside Energy Center.

7. Relative to the appropriation level before Act 55, the Governor's proposal would increase the intervenor compensation appropriation to the amount that was previously budgeted for intervenor compensation expenses. Although the PSC has \$325,000 in remaining expenditure authority for 2016-17, that authority could be exhausted due to several rate cases for major utilities. As those cases approach resolution, additional compensation requests could occur in 2017-18. In addition, an application for constructing a high-voltage electric transmission line is expected in 2017-18. This combination of PSC cases could cause the level of compensation requests to be similar to that in 2014-15. The intervenor compensation appropriation level serves as a limit on intervenor expenditures, and the PSC does not assess for expenditures that do not occur.

8. The PSC issued grants under the intervenor compensation program to a nonprofit advocacy corporation in each year between 2010 and 2015. The PSC has not awarded a grant to a nonprofit advocacy corporation since the Act 55 funding change, even though the PSC has retained the authority to do so. Even with the Governor's proposed funding increase, the intervenor compensation appropriation would be \$300,000 below its pre-Act 55 funding level. If the Committee wants the PSC to begin making grants to nonprofit advocacy corporations again, it could modify the Governor's proposal by increasing the appropriation's funding level by an additional \$300,000 PR annually. This is presented as Alternative #2, below. However, given the discretion that the PSC has in awarding intervenor funding, it is uncertain that additional grant funding would be extended to nonprofit organizations.

ALTERNATIVES

1. Approve the Governor's recommendation to increase the authorization for the intervenor compensation appropriation by \$371,300 annually.

ALT 1	Change to	
	Base	Bill
PR	\$742,600	\$0

2. Increase the authorization for the intervenor compensation program by \$671,300 annually. This includes the \$371,300 included in the Governor's recommendation and an additional \$300,000 to ensure that grants to nonprofit advocacy corporations are funded. Set the appropriation at \$1,042,500 annually.

ALT 2	Change to	
	Base	Bill
PR	\$1,342,600	\$600,000

3. Delete the Governor's recommendation and maintain the current law appropriation level for the intervenor compensation program.

ALT 3	Change to	
	Base	Bill
PR	\$0	- \$742,600

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