



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

June, 2019

Joint Committee on Finance

Paper #615

### **Intervenor Compensation (Public Service Commission -- Departmentwide and Energy Programs)**

[LFB 2019-21 Budget Summary: Page 393, #3]

---

#### **CURRENT LAW**

The Public Service Commission's (PSC) intervenor compensation program provides financial assistance to organizations and individuals who choose to become an intervenor for a Commission proceeding. 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 submit testimony and exhibits at hearings, which become part of the record considered by the Commission in making decisions. 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. Financing is funded through assessments on utilities, typically the utility involved in the proceeding, and budgeted as program revenue (PR). The intervenor compensation appropriation level serves as a limit on intervenor expenditures, and the PSC does not assess for expenditures that do not occur.

## **GOVERNOR**

Provide an additional \$300,000 each year for intervenor compensation, for a total of \$1,042,500 each year of the biennium. Further, increase from a total of \$300,000 annually to \$500,000 annually the Commission's authorization to award, from this amount, grants to nonstock, nonprofit corporations that have a history of advocating on behalf of residential ratepayers for affordable rates.

## **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. Intervenors balance PSC proceedings by allowing affected parties, who are otherwise without the necessary ability or resources, to challenge the information presented by public utilities. This helps ensure that PSC decisions are based on a complete factual record, and may reduce future costs of litigation.

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 may audit the books, papers, documents, and records supporting requests for compensation. PSC staff review each application for compensation, may request additional information, and may recommend that the Commission approve some, all, or none of a request.

3. Table 1 provides a list of entities requesting intervenor compensation and their resulting reimbursements since 2015-16, through January, 2019. Reimbursements listed in the table are aggregated into three categories: (a) \$1,020,200 for internal staff (73%); (b) \$287,500 for expert witnesses (20%); and (c) \$92,300 for attorneys (7%). 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.

4. As seen in Table 1, requests for reimbursement are sometimes reduced or denied. PSC staff report that requests are denied: (a) when there are questions about eligibility for grants; (b) when an applicant does not provide sufficient evidence to demonstrate that their testimony would be relevant or material to the proceeding; or (c) when the Commission believes the intervenor's information would duplicate information already in the record.

**TABLE 1****Intervenor Compensation Reimbursements**

| <u>Recipient</u>                                 | <u>Amount Requested</u> | <u>Amount Received</u> |
|--|-------------------------|------------------------|
| <b>2016</b>                                      |                         |                        |
| Citizens Utility Board (CUB)                     | \$190,400               | \$190,400              |
| Edgewater Estates Subdivision                    | 45,000                  | 0                      |
| RENEW Wisconsin                                  | <u>26,800</u>           | <u>0</u>               |
| Subtotal - 2016                                  | \$262,200               | \$190,400              |
| <b>2017</b>                                      |                         |                        |
| Citizens Utility Board                           | \$388,200               | \$368,200              |
| <b>2018</b>                                      |                         |                        |
| Citizens Utility Board                           | \$764,700               | \$704,700              |
| Clean Wisconsin                                  | <u>76,600</u>           | <u>0</u>               |
| Subtotal - 2018                                  | \$841,300               | \$704,700              |
| <b>2019*</b>                                     |                         |                        |
| Driftless Area Land Conservancy                  | \$85,300                | \$39,700               |
| Citizens Utility Board                           | 39,700                  | 39,700                 |
| Clean Wisconsin                                  | 35,700                  | 35,700                 |
| Village of Montfort, and Grant and Iowa Counties | 21,600                  | 21,600                 |
| Jewell Jinkins Intervenors                       | 54,100                  | 0                      |
| Brenda and Casey Kite                            | <u>31,600</u>           | <u>0</u>               |
| Subtotal - 2019                                  | \$268,000               | \$136,700              |
| Total  | \$1,759,700             | \$1,400,000            |

\*Through January, 2019.

5. Utilities pay assessments to cover costs reimbursed to intervenors for dockets in which the utility is involved. Table 2 shows these assessments since 2015-16. PSC staff report that because assessments are not imposed until after costs are reimbursed, there is a delay between when compensation is awarded and when utilities pay assessments. Thus, assessments in Table 2 do not align with reimbursements shown in Table 1.

6. Funding was increased from \$750,000 in 2008-09 to \$1,042,500 each year beginning in 2009-10 under 2009 Wisconsin Act 383, which created the \$300,000 grant for nonstock, nonprofit corporations that have a history of advocating on behalf of residential ratepayers for affordable rates, discussed later. Funding had been increased for this purpose under the 2009-11 enrolled biennial budget bill, but was subsequently vetoed.

**TABLE 2****Intervenor Compensation Assessments by Utility**

|                                      | <u>2015-16</u>   | <u>2016-17</u>   | <u>2017-18</u>   | <u>2018-19*</u> | <u>Total</u>       |
|--------------------------------------|------------------|------------------|------------------|-----------------|--------------------|
| Wisconsin Electric Power Company     | \$9,327          | \$99,083         | \$128,296        | \$2,888         | \$239,593          |
| Alliant Energy Corporation           | 79,075           | 73,667           | 37,706           | 1,294           | 191,741            |
| Wisconsin Public Service Corporation | 92,518           | 59,820           | 33,763           | 1,847           | 187,948            |
| American Transmission Company        | 150,784          | 13,686           | 14,543           |                 | 179,013            |
| Northern States Power Company        | 63,437           | 21,343           | 54,804           | 581             | 140,166            |
| Madison Gas and Electric             | 21,618           | 38,205           | 20,232           | 2,616           | 82,671             |
| Wisconsin Gas LLC                    | 426              |                  | 7,920            |                 | 8,346              |
| Kaukauna Utilities                   |                  |                  | 3,131            |                 | 3,131              |
| Madison Water Utility                |                  |                  |                  | 2,456           | 2,456              |
| Superior Water, Light and Power      |                  |                  | 169              | 994             | 1,163              |
| WPPI Energy                          | 848              |                  |                  |                 | 848                |
| Waukesha Water Utility               |                  | 305              | 259              |                 | 564                |
| Badger Hollow LLC                    |                  |                  | 206              | 206             | 413                |
| Shawano Municipal Utilities          |                  |                  | 300              |                 | 300                |
| Nextera Energy Resources             |                  |                  |                  | 300             | 300                |
| Menasha Utilities                    |                  |                  | 263              |                 | 263                |
| ITC Midwest                          |                  |                  | 244              |                 | 244                |
| <b>Total (Year)</b>                  | <b>\$418,031</b> | <b>\$306,110</b> | <b>\$301,836</b> | <b>\$13,181</b> | <b>\$1,039,138</b> |

\*Through January, 2019.

7. The 2015-17 enrolled biennial budget bill included a provision to: (a) eliminate the authorization for grants to nonprofit corporations; (b) 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; and (c) reduce funding for intervenor compensation from \$1,042,500 to \$371,200. 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. Funding with respect to intervenor reimbursement (but not grants to nonprofit corporations) was subsequently restored under 2017 Wisconsin Act 59, and intervenor compensation is budgeted at \$742,500 during the 2017-19 biennium. The Governor's proposal would further restore funding to the level provided from 2009-10 through 2014-15.

8. Intervenor compensation is provided under a program revenue appropriation that receives funding from assessments on utilities based only on actual costs of intervenors. Thus, the amounts provided in the schedule for intervenor compensation represent the maximum allowable amount PSC may expend, but may not necessarily reflect actual expenses. Intervenor compensation is provided on a biennial basis, meaning budgeted amounts may be expended in either fiscal year of the biennium. Table 3 provides a summary of authorized and actual expenditures since 2009-10.

**TABLE 3****Budgeted Intervenor Compensation**

|         | <u>Reimbursements</u> | <u>CUB Grant</u> | <u>Total Expenditures</u> | <u>Budget</u>  | <u>Biennial Authority Unspent</u> |
|---------|-----------------------|------------------|---------------------------|----------------|-----------------------------------|
| 2009-10 | \$502,400             | \$300,000        | \$802,400                 | \$1,042,500    |                                   |
| 2010-11 | 678,300               | 300,000          | 978,300                   | 1,042,500      | \$304,300                         |
| 2011-12 | 278,000               | 293,000          | 571,000                   | 1,042,500      |                                   |
| 2012-13 | 510,900               | 300,000          | 810,900                   | 1,042,500      | 703,100                           |
| 2013-14 | 273,300               | 300,000          | 573,300                   | 1,042,500      |                                   |
| 2014-15 | 734,000               | 300,000          | 1,034,000                 | 1,042,500      | 477,700                           |
| 2015-16 | 259,800               | 0                | 259,800                   | 371,200        |                                   |
| 2016-17 | 295,900               | 0                | 295,900                   | 371,200        | 186,700                           |
| 2017-18 | 518,000               | 0                | 518,000                   | 742,500        |                                   |
| 2018-19 | <u>13,500*</u>        | <u>300,000</u>   | <u>313,500*</u>           | <u>742,500</u> | 653,500*                          |
| Total   | \$4,064,100           | \$2,093,000      | \$6,157,100               | \$8,482,400    |                                   |

\*Reflects expenditures through May 31, 2019.

9. PSC staff report it is difficult to anticipate need for intervenor compensation due to the variability and uncertainty in both the Commission's schedule and the level of interest in items being considered. Given that the Commission considers intervention requests on a case-by-case basis based on need and relevance, increased expenditure authority associated with the program would allow the Commission more flexibility to allow intervenors if larger or more controversial cases came before it. At the same time, the Commission has accumulated unused expenditure authority in recent years, suggesting it may already have sufficient flexibility to provide compensation to intervenors.

10. PSC staff report they are to increase promotion of the intervenor compensation program, to encourage more participation and from a more diverse set of intervenors. For example, PSC recently awarded funding to the Village of Montfort for its participation in Commission proceedings related to the Cardinal-Hickory Creek transmission line project. Staff expect increased outreach will increase demand for intervenor compensation, and argue any increased expenditure authorization provided would allow it to further increase diversity of intervenors.

11. Proposals put forth by utilities at the Commission represent substantial planning and investment by that utility, which must make a case for the necessity of its proposal. If approved, the cost of most proposals brought before the Commission is typically borne by a broad base of ratepayers. Any item before the Commission represents a small increase in any given ratepayer's bill, and the cost to contest a proposed increase is considerably higher than any individual benefit of doing so. Thus, while the utility is able to allocate resources to argue its case before the Committee, the diffuse set of ratepayers lack the individual financial incentive to participate in proceedings, but subsequently bear any cost associated with approval of a utility's proposal. Intervenor compensation provides financial support to parties that may represent the interests of this diffuse base of ratepayers, and thus allows the Commission a broader perspective and set of evidence in its decision-making.

Because intervenor compensation is paid with assessments on utilities, who subsequently pass on those costs to ratepayers, it allows a broad base of ratepayers to individually contribute funding commensurate with their anticipated benefit of representation before the Commission.

12. Beginning in 2010, 2009 Act 383 authorized PSC to provide annual grants of up to \$300,000 from the intervenor compensation appropriation to one or more nonstock, nonprofit corporations that have a history of advocating on behalf of residential ratepayers for affordable rates. Grants may support general operating expenses of recipients, including salary, benefits, rent, and utility expenses. Since its inception, only the Citizens Utility Board (CUB) has received funding under this provision, with amounts by year shown in Table 3. Following funding decreases under 2015 Act 55, PSC did not provide grants in 2015-16, 2016-17, or 2017-18. It resumed providing this grant in September, 2018.

13. The Governor's proposal would increase this authorization to \$500,000 annually. The administration argues an increased authorization would allow CUB to increase its participation in proceedings and advocacy for ratepayers. However, as seen in Table 1, while CUB was not provided a direct grant for operating expenditures in 2015-16, 2016-17, or 2017-18, it still received reimbursement funding under the intervenor compensation program totaling \$1,263,300. At the same time, as CUB is the entity most often involved in intervenor work, it is not unexpected that it received a majority of compensation.

14. PSC staff note that while annual grants have only been provided to CUB, the Commission has always offered a competitive request for proposals and prepared materials evaluating the CUB request. Thus, it is possible other entities could apply for this funding, although both PSC staff and the administration are not able to report any other entities that would be eligible.

15. Given that intervenor compensation allows ratepayers to support participation by entities advocating on their behalf, and broadens the record for consideration by the Commission, the Committee could consider approving the Governor's proposal to increase intervenor compensation by \$300,000 to \$1,042,500 each year (Alternative 1a). The Committee could also consider providing smaller amounts of \$200,000 (Alternative 1b) or \$100,000 (Alternative 1c).

16. Given that CUB was still able to pursue funding for expenses related to intervenor work while it was not receiving a direct grant, the Committee could consider providing increased funding under the reimbursement program, and allow CUB to apply for funds for reimbursement like other intervenors. This would allow the Commission more flexibility and other intervenors a more competitive allocation process than a direct increase in allocations to CUB (Alternatives under 1). Conversely, given CUB's significant involvement in intervenor work, the Committee could consider increasing PSC's authorization to award a grant to CUB or other eligible organizations, should any apply, for operating expenses (Alternative 2). If the Committee adopted Alternative 2, Alternative 1b would allow it to cover the increased CUB grant, while leaving reimbursement funding unchanged. The Committee could also consider increasing the authorization for the CUB grant, while retaining funding at its current level, which would allow PSC to allocate existing resources as it sees is most effective (Alternative 2).

17. Given that recent appropriation allocations have not been fully utilized, it is possible that

current funding is sufficient to fund current intervenor activities, and the Committee could consider taking no action (Alternative 3).

**ALTERNATIVES**

1. Increase intervenor compensation by:

a. \$300,000 each year, for a total of \$1,042,500 each year. (This would adopt the Governor's proposal.)

| <b>ALT 1a</b> | <b>Change to</b> |             |
|---------------|------------------|-------------|
|               | <b>Base</b>      | <b>Bill</b> |
| PR            | \$600,000        | \$0         |

b. \$200,000 each year, for a total of \$942,500 each year. (Combined with Alternative 2 below, this would maintain current funding for intervenor reimbursements, but cover increased costs associated with the CUB grant.)

| <b>ALT 1b</b> | <b>Change to</b> |             |
|---------------|------------------|-------------|
|               | <b>Base</b>      | <b>Bill</b> |
| PR            | \$400,000        | - \$200,000 |

c. \$100,000 each year, for a total of \$842,500 each year.

| <b>ALT 1c</b> | <b>Change to</b> |             |
|---------------|------------------|-------------|
|               | <b>Base</b>      | <b>Bill</b> |
| PR            | \$200,000        | - \$400,000 |

2. Adopt the Governor's proposal to increase the Commission's authorization to award grants to nonstock, nonprofit corporations that have a history of advocating on behalf of residential ratepayers for affordable rates from \$300,000 annually to \$500,000 annually. (This alternative could be moved in addition to or independent of Alternatives under 1.)

3. Take no action.

| <b>ALT 3</b> | <b>Change to</b> |             |
|--------------|------------------|-------------|
|              | <b>Base</b>      | <b>Bill</b> |
| PR           | \$0              | - \$600,000 |

Prepared by: Rory Tikalsky