

FERC Office of Public Participation: A Transformative Opportunity for Public Interest Advocacy

Presentation to the Consumer Protection Committee of the
National Association of State Utility Consumer Advocates

Tyson Slocum

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Twitter @TysonSlocum



On December 27, 2020 President Trump signed the *FY2021 Omnibus and COVID Relief and Response Act* (HR133). The accompanying joint House-Senate Appropriations Committee Report (Division D—Energy & Water) states:

“FERC is directed to submit to the Committees on Appropriations of both Houses of Congress not later than 180 days after enactment of this Act a report detailing how it will establish and operate the Office of Public Participation required under section 319 of the Federal Power Act, beginning in fiscal year 2022. As part of the report, FERC shall provide an organizational structure and budget for the office sufficient to carry out its statutory obligations. The report shall assume that funding for the Office of Public Participation will be derived through annual charges and filing fees as authorized by the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986.”

Public Citizen's 2016 Petition for a Rulemaking To Establish The Office Of Public Participation

16 USC § 825q-1. Office of Public Participation

(a)

(1) There shall be an office in the Commission to be known as the Office of Public Participation (hereinafter in this section referred to as the "Office").

(2)

(A) The Office shall be administered by a Director. The Director shall be appointed by the Chairman with the approval of the Commission. The Director may be removed during his term of office by the Chairman, with the approval of the Commission, only for inefficiency, neglect of duty, or malfeasance in office.

(B) The term of office of the Director shall be 4 years. The Director shall be responsible for the discharge of the functions and duties of the office. He shall be appointed and compensated at a rate not in excess of the maximum rate prescribed for GS-18 of the General Schedule under section 5332 of title 5.

(3) The Director may appoint, and assign the duties of, employees of such Office, and with the concurrence of the Commission he may fix the compensation of such employees and procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5.

(b)

(1) The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.

(2) The Commission may, under rules promulgated by it, provide compensation for reasonable attorney's fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that—

(A) the proceeding is significant, and

(B) such person's intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him.

Office of Public Participation Statutory Requirements:

- **Director serves a four year term, appointed by the Chair and confirmed by full Commission.**
- **The Director shall coordinate assistance to the public, including to persons intervening, participating or proposing to intervene in proceedings before the Commission.**
- **The Commission can provide compensation for reasonable attorney's fees, expert witness fees, and other costs of participating in any FERC proceeding to any person whose participation **substantially contributed** to the approval, in whole or in part, of a position advocated by such person.**
- **Such compensation may be paid only if the Commission has determined that—**
 - (A) the proceeding is significant, and
 - (B) such person's participation without receipt of compensation constitutes a significant financial hardship to him.

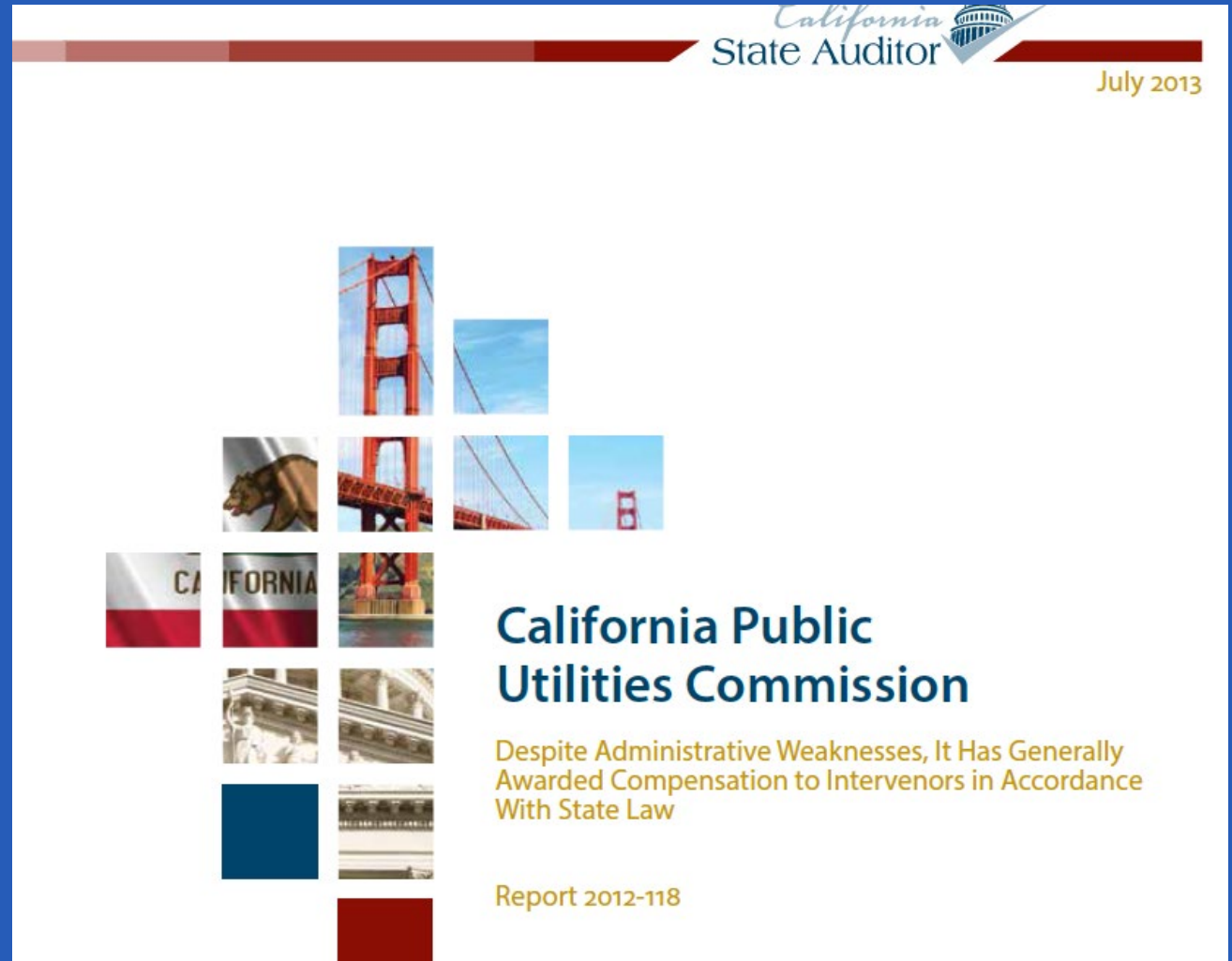
9 States Have Some Form of Intervenor Compensation

- **California is the gold standard (CA Public Utilities Code § 1801-1807)**
- **Colorado § 40-6.5-105**
- **Idaho Title 61 Chapter 6 (61-617A)**
- **Maine Title 35-A, Part 1, Chapter 13 §1310**
- **Michigan § 460.6L-M establishes a Utility Consumer Participation Board**
- **Minnesota § 216B.16(10)**
- **New Hampshire § 365:38-a**
- **Oregon www.oregon.gov/puc/filing-center/Pages/Intervenor-Funding.aspx**
- **Wisconsin § 196.31**

California Intervenor Funding Is a Huge Success

The California state auditor determined the only administrative weakness was that qualified intervenors were not being compensated within the statutory deadline.

The return on the investment for ratepayers is roughly 14:1.



California State Auditor

July 2013

California Public Utilities Commission

Despite Administrative Weaknesses, It Has Generally Awarded Compensation to Intervenors in Accordance With State Law

Report 2012-118

Qualifying public interest intervenors in California are reimbursed roughly \$12 million a year

Year	Amount Awarded to Intervenors by Decisions Issued that Year
2015	\$12,575,545.38
2016	\$10,251,077.38
2017	\$6,342,036.23
2018	\$10,168,178.39*
2019	\$11,965,124.75
2020	
YTD	\$11,831,370.46

CPUC Public Advisor's Office

The Public Advisor's Office provides procedural information to individuals and groups who want to participate in formal proceedings at the California Public Utilities Commission (CPUC). In addition, we provide programs and services to educate and assist the public, including special accommodations and interpreter services. Our staff can help answer your questions, help you locate information, or refer you to an appropriate staff person. The Public Advisor's Office has duties that are mandated by [CA Public Utilities Code Section 321](#).

At the California CPUC, the Public Advisor serves as the liaison to public interest groups seeking to participate.

And the Intervenor Compensation section of the Administrative Law Judge Division reviews and awards intervenor compensation.

Public Citizen Envisions Two Broad Functions of the Office of Public Participation

First, conducting extensive outreach and providing technical assistance to those representing the interests of consumers, environmental justice, climate and equity; tribes; landowners and others impacted by infrastructure; and municipalities.

Second, coordinating financial assistance, with FERC's Administrative Law Judges conducting the award evaluation.

The only advocacy conducted by the Office is encouraging public participation at FERC. The Office will take no positions on tariffs or pipelines, other than to work hard to ensure the public is aware, knowledgeable, and equipped with the resources required to meaningfully participate.

The FERC Office of Public Participation must have field staff to meet the public where they live

In addition to FERC's Washington, DC HQ near Union Station, the Office of Public Participation could have additional staff at FERC's current hydropower field offices, including New York City, Atlanta, Chicago, San Francisco and Portland, OR, and FERC's MISO satellite office in Carmel, IN. Office of Public Participation field offices should be adjusted over time to reflect need.

Environmental Justice

- **The FERC OPP should have an Environmental Justice Managing Director tasked with dedicated outreach and coordination of financial assistance to encourage participation.**
- **The FERC OPP could consult with the Council on Environmental Quality staff and its guidance on Environmental Justice under the National Environmental Policy Act, with the White House Office of Climate Policy, and relevant state attorney general environmental justice programs.**

Natural Gas Act Field Response

- **For all applications for construction and operation of interstate natural gas pipelines, and applications for pipeline abandonment, FERC OPP staff should immediately engage impacted communities and serve as a point of contact for assistance.**
- **OPP staff must travel onsite for some period to work with the local community.**

RTOs/ISOs

- **The FERC OPP should have dedicated staff tasked to each of the six RTOs: CAISO, PJM, NYISO, ISO-NE, MISO and SPP, including the consideration of field offices at each RTO.**
- **FERC OPP staff will have unfettered access to RTO meetings, and provide reports on RTO proceedings for public dissemination.**
- **Consideration could be made to extend qualifying intervenor funding for the public interest to meaningfully participate in RTO stakeholder processes (and similar North American Electric Reliability Corporation stakeholder meetings).**

Intervenor Funding Mechanics

- **Parties seeking compensation could be required to submit A Notice of Intent to Claim Intervenor Compensation at the beginning of the proceeding.**
- **In no later than 60 days after the issuance of an order in the proceeding, those seeking compensation should file a claim.**
- **The claim would be processed and evaluated by an Administrative Law Judge, who would be required to issue a Proposed Decision on the award within 75 days of the claim being filed by the party.**
- **The party seeking compensation would have 15 days to dispute any clerical or substantive errors in the Proposed Decision, which could be appealable to either a panel of ALJs and/or to the full Commission.**
- **No later than 30 days after a Final Decision on awarding compensation, the claim would be paid to the applicant.**

The Securities and Exchange Commission (Investor Advocate) and Small Business Administration (Office of Advocacy) Have Somewhat Similar Independent Offices

Office of the Investor Advocate

The Office of the Investor Advocate was established at the Securities and Exchange Commission on February 24, 2014, when Rick A. Fleming was appointed as the Commission's first Investor Advocate.

OFFICE OF THE INVESTOR ADVOCATE
REPORT ON ACTIVITIES

FISCAL YEAR 2020

Section 4(g)(6) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g)(6), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.¹ A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.² On June 27, 2019, the Office of the Investor Advocate (Office) filed a Report on Objectives for Fiscal Year 2020.³



OPP Staff/Budget Needs

- **Full-time OPP staff of at least 27**
 - Director and Deputy Director
 - Environmental Justice Managing Director
 - Field Manager
 - FPA/NGA Supervisory Attorney
 - FPA/NGA Managing Attorney
 - FPA/NGA technical assistance attorneys (2)
 - Intervenor funding liaison (2)
 - Energy analyst (2)
 - RTO field staff (6)
 - Natural gas field (6)
 - General admin/support (3)
- **Administrative Law Judge Intervenor Compensation Division**
 - Existing ALJs review and approve intervenor compensation claims
 - Additional full-time staff of 6 to assist with reviewing and processing IC claims
- **Annual Budget For Intervenor Compensation Reimbursements: \$30 million**