

Intervenor Funding in Public-Utility Rate Cases

by Nancy Brockway

I. Introduction

Low-income customers have a big stake in the decisions of public-utility regulatory agencies. This column identifies resources that may be available to enable low-income consumers and their advocates to participate in the regulatory proceedings that dictate utility rates and practices.

By engaging in litigation before public-utilities regulatory commissions, advocates have been successful in protecting their clients from the consequences of high utility bills. Vigorous representation of low-income clients in utility regulatory proceedings has produced significant benefits including discount payment programs,¹ percentage of income payment programs,² customer service regulations, targeted conservation funding for low-income customers,³ and utility funding of a universal service access program and low-income telecommunications training centers.⁴

Legal representation in utilities cases is more important today than ever before. Radical changes that could have far-reaching consequences for low-income Americans are taking place in the electric, gas, and telephone industries. Utility industries are evolving from regulated monopolies to more competitive models. In this climate, low-income customers and their representatives could play a vital role not only in preventing adverse consequences, but in shaping the new industry models that will dominate utility services for decades to come.

However, the lack of funds to pursue regulatory litigation prevents many legal services offices from offering the full range of representation to their clients in public-utility matters. The level of specialized expertise required of counsel, and the cost of securing necessary expert witnesses, place barriers in front of legal services offices seeking to provide legal assistance to their clients in public-utility cases.

In some situations, funds are available specifically to support representation of

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¹ *In re* Western Mass. Elec. Co., D.P.U. Docket 86-270A (Mass. Dep't of Pub. Util. 1987) (order approving expansion of elderly and disabled discount to low-income customers generally, relying on presentation by National Consumer Law Center) (Clearinghouse No. 42,879).

² *Pennsylvania Pub. Util. Comm'n v. Columbia Gas of Pa.*, Docket No. R-891468 (Pa. Pub. Util. Comm'n July 6, 1992) (approving stipulation providing for Customer Assistance Plan); *In re* Application of Tex. Util. Elec. Co. for Authority to Change Rates, Docket No. 11735 (Tex. Pub. Util. Comm'n Dec. 1993) (approving maintenance of effort percentage of bill pilot proposed by Texas Legal Services Center, with testimony by National Consumer Law Center).

³ *In re* Application of Tex. Util. Elec. Co. for Authority to Change Rates, Docket No. 11735.

⁴ *In re* Application of the Ohio Bell Tel. Co. for Approval of an Alternative Form of Regulation, Case Nos. 93-487-TP-ALT, 93-576-TP-CSS (Pub. Util. Comm'n of Ohio 1994) (order approving stipulation) (Clearinghouse No. 50,279).

consumers in regulatory proceedings. The federal government and a number of states provide for the reimbursement of funds expended by representatives who successfully intervene in certain types of proceedings. This article provides an overview of the law that governs the availability of such funding.⁵

II. Intervenor Funding Under the Public Utilities Regulator Policy Act

The Public Utilities Regulatory Policy Act of 1978 (PURPA)⁶ provides that utilities must compensate intervenors who "substantially contribute to the approval, in whole or in part, of a position advocated by . . . consumer[s]" concerning enumerated topics set forth in the statute where the state has provided no "alternative means" for their representation.⁷ PURPA was enacted to promote greater efficiency in the use of electricity and to promote certain minimal protections for customers of electric utilities. In 1992, its scope was expanded to include greater competition in the wholesale market for electricity, adoption by states of integrated least-cost planning, and utility investments in conservation and renewable energy sources.⁸

PURPA funding is available to address a wide range of issues in electric utility rate-setting and the customer service protections afforded to consumers of electricity. These issues include (1) use of cost of service to determine rates; (2) declining block rates; (3) time-of-day rates; (4) seasonal rates; (5) interruptible rates; (6) load management techniques; (7) master metering; (8) automatic adjustment clauses; (9) provision of rate information to customers; (10) adequacy of notices of termination and limitations on disconnection when lack of service would be dangerous to health; (11) limits on cost recovery for promotional advertising; (12) lifeline rates; (13) integrated resource planning; (14) investments in conservation and demand management; and (15) assurance of adequate fuel supplies, among other topics.⁹

Intervenors meeting the statute's criteria may recover the costs of their intervention in one of two ways. If a state¹⁰ has adopted reasonable procedures to compensate intervenors, intervenors must use these procedures.¹¹ If no such procedures have been adopted, however, intervenors may initiate a civil action in state court against the utility.¹²

⁵ In the Energy Policy Act of 1992, Congress authorized funding of Community Action Agencies to intervene in state commission proceedings concerning least-cost planning and other matters that would have an impact on low-income weatherization and related issues. Pub. L. No. 102-486, § 112, 106 Stat. 2797. However, to date no funds have been appropriated to fulfill this provision. Grant and contract funding, at least to defray expert witness fees, is often available to local legal services offices seeking to support an intervention, but this article will not address this source of funds.

⁶ Public Utilities Regulatory Policy Act of 1978 (PURPA), 16 U.S.C. §§ 2601 *et seq.*

⁷ 16 U.S.C. § 2632(a)(1), (b).

⁸ Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776-822.

⁹ 16 U.S.C.A. §§ 2621(d)(1)-(10), 2624, 2632(a), (b).

¹⁰ Or the utility, where it is not regulated by the state agency, as is often the case with rural electric cooperatives. 16 U.S.C.A. § 2632(a)(2).

¹¹ *Id.* The following states have adopted procedures that can be used by commissions to award intervenor funding under PURPA: Alaska, California, Colorado, Idaho, Maine, Michigan, Minnesota, New Hampshire, Oklahoma, and Wisconsin. *See infra* note 24 and accompanying text.

¹² *Id.* In Idaho, Minnesota, and Oklahoma, the courts ruled that, in the absence of the formal adoption of procedures for considering PURPA claims, PURPA intervenors must use the civil litigation, 16 U.S.C. § 2632(a)(2), (3), to obtain funding. *Idaho Power Co. v. Idaho Pub. Util. Comm'n*, 639 P.2d 442 (Idaho 1981); *Senior Citizens Coalition v. Minnesota Pub. Util. Comm'n*, 355 N.W.2d 295 (Minn. 1984); *Public Serv. Co. of Okla. v. Coalition for Fair Utility Rates*, 688 P.2d 1274 (Okla. 1984); *Smith v. Corporation Comm'n*, 225 P. 708 (Okla. 1924). These states later passed statutes providing a mechanism for claiming intervenor funding through the regulatory agency. *See infra* note 24 and accompanying text.

Most of the litigation under the intervenor-funding provisions of PURPA has focused on the “alternative means for assuring representation” exception to PURPA’s mandate of funding. PURPA provides that compensation of consumer intervenors is not required if the state has “provided an alternative means for assuring representation of electric consumers. . . .”¹³ The conflict generally arises when a state appoints a publicly funded counsel to represent consumer interests in utility proceedings. The question is whether such publicly funded advocacy satisfies the statutory exception.

One court has adopted what amounts to a per se rule that, whenever a publicly funded counsel is involved in the case, there is “an alternative means” sufficient to defeat the intervenors’ claim for funding.¹⁴ Other courts, however, have adopted a case-by-case approach.¹⁵ At least 39 states plus the District of Columbia have some form of publicly funded utility regulatory advocate for consumers, thereby making this issue a key determiner of the viability of the PURPA funding mechanism.

In *POWER v. Washington Water Power Corp.*, intervenor POWER argued that a special attorney general appointed to intervene in the case could not adequately represent all classes of consumers, many of whom had interests that were potentially adverse to one another. The court addressed POWER’s arguments through a two-part analysis: “(1) whether existing statutes provide for adequate representation by a special assistant attorney general of consumer interests; and (2) whether there was adequate representation in this case.”¹⁶ Because the special attorney general was (1) independent of the statute’s regulatory authority, (2) empowered to appear and participate in any regulatory proceeding, (3) authorized to retain outside experts, and (4) authorized to hire and retain staff, the court concluded that the office was capable of providing adequate representation to consumers. The court rejected POWER’s argument that conflicts would inevitably arise between various classes of consumers and held that there was no requirement that each class of consumers be represented separately in every case. After examining the facts of the particular case, the court determined that POWER, which advocated positions that were more or less congruent with those advocated by the special attorney general, was adequately represented in the instant case. Accordingly, the court affirmed the lower court’s denial of POWER’s request for funding.¹⁷

Courts adopting a “case-by-case” approach look to whether there is conflict between the positions of different segments of the public that the publicly funded counsel is mandated to represent.¹⁸ In *United Tenants of Albany, Inc. v. Niagara Mohawk Power Corp.*, the utility argued that the request of intervenor United Tenants Association (UTA) should be denied because the Consumer’s Protection Board (CPB), which is charged with representing the interests of New York consumers in utility proceedings, adequately represented the association. UTA countered that CPB was incapable of vigorously representing its interests because of inadequate funding and inherent conflicts of interest between different classes of consumers that CPB was charged with representing. The court held that it must consider whether the particular positions advanced by UTA were sufficiently similar to those advanced by CPB to merit a conclusion that CPB adequately represented UTA.¹⁹

¹³ 16 U.S.C. § 2632(a)(1).

¹⁴ *POWER v. Washington Water Power Co.*, 662 P.2d 374 (Wash. 1983) *aff’d and modified on rehearing*, 684 P.2d 716 (Wash. 1984).

¹⁵ See note 24, *infra*, and accompanying text.

¹⁶ *POWER*, 662 P.2d at 376.

¹⁷ *Id.*

¹⁸ *Utah State Coalition of Senior Citizens v. Utah Power & Light*, 776 P.2d 632, 636 (Utah 1989); *Rodriguez v. Orange & Rockland Util. Inc.*, 506 N.Y.S.2d 888 (App. Div. 1986); *United Tenants of Albany, Inc. v. Niagara Mohawk Power Corp.*, 487 N.Y.S.2d 467 (Sup. Ct. 1984), *aff’d*, 497 N.Y.S.2d 1019 (App. Div. 1985) (Clearinghouse No. 38,540).

¹⁹ *United Tenants of Albany*, 487 N.Y.S.2d at 471.

In *Utah State Coalition of Senior Citizens v. Utah Power and Light Co.*, the Utah Supreme court agreed with the New York courts' interpretation of the alternative means provisions of PURPA.²⁰ The utility had argued that PURPA funding was not available because the state funded a Committee of Consumer Services and the Utah Division of Public Utilities. The court rejected this argument, which it termed a *per se* approach to the statutory standard. It would be "impossible," the court reasoned, for the Division of Public Utilities to consider the financial health of the utility and fair apportionment of costs among all consumers,²¹ while at the same time zealously advocating the interests of particular groups of consumers, such as the elderly and low-income groups represented in the proceedings.²² As for the Committee of Consumer Services, the court noted its limited mandate, conflicts between different customer group interests on the committee, and its being, by its own admission, underfunded.²³

III. State Authority for Intervenor Funding

Intervenor funding for at least some types of public-utility proceedings has been explicitly approved in at least 13 states.²⁴ In a fourteenth state, the court denied a request made to a regulatory commission solely on the grounds that the commission had not yet adopted procedures for processing such requests.²⁵ A North Dakota court has indicated in dictum that intervenor funds are available in that state under certain circumstances.²⁶

In eight states, statutory authority for at least some intervenor-funding awards has been enacted.²⁷ In most of these states, the statute authorizes compensation in any matter before the public utilities commission.²⁸ The Oklahoma statute was enacted

²⁰ *Utah State Coalition of Senior Citizens*, 776 P.2d at 632.

²¹ See UTAH CODE ANN. §§ 54-4a-6, 54-10-4(3) (1994).

²² *Utah State Coalition of Senior Citizens*, 776 P.2d at 637.

²³ *Id.*

²⁴ ALASKA ADMIN. CODE, tit. 3, § 48.115; CAL. PUB. UTIL. CODE §§ 1801 *et seq.* (Deering 1993); Consumers Lobby Against Monopolies v. Public Util. Comm'n, 603 P.2d 41 (Cal. 1979) (Clearinghouse No. 28,411); *In re Southern Cal. Edison Co.*, 45 Pub. Util. Rep. (PUR) 4th 217 (Cal. Pub. Util. Comm'n 1981); COLO. REV. STAT. § 40-6.5-105 (1991); Mountain States Tel. & Tel. Co. v. Public Util. Comm'n, 576 P.2d 544 (Colo. 1978); O'Bryant v. U.S. West Communications, 132 Pub. Util. Rep. (PUR) 4th 417 (Colo. Pub. Util. Comm'n 1992); IDAHO CODE § 61-617A (1992); Idaho Fair Share v. Public Util. Comm'n, 751 P.2d 107 (Idaho 1988); Northern Ind. Pub. Serv. Co. v. Citizens Action Coalition of Ind., Inc., 548 N.E.2d 153 (Ind. 1989); ME. REV. STAT. ANN. § 1310 (1992); MICH. COMP. LAWS §§ 460.6(l), (m) (1990); MINN. STAT. ANN. § 216B.16(10) (West, 1992), § 237.075(10) (1984); N.H. CODE ADMIN. R. PUC 205; *Rodriguez*, 506 N.Y.S.2d 888; OKLA. STAT. tit. 17, § 34.1 (1981); *Public Serv. Co. of Okla.*, 688 P.2d at 1274; *Utah State Coalition of Senior Citizens*, 776 P.2d at 632 (in absence of public-utility commission procedures, action for fees must be brought in state court, not before public utility commission, but court found all but one precondition for fees met by intervenors); and WIS. STAT. ANN. § 196.31 (West 1992), WIS. ADMIN. CODE §§ PSC 3.01 *et seq.*

²⁵ *Utah State Coalition of Senior Citizens*, 776 P.2d at 638.

²⁶ *Shark v. Northern States Power Co.*, 477 N.W.2d 251 (N.D. 1991) (rejecting claim for attorney fees under North Dakota's Equal Access to Justice Act, N.D. CENT. CODE § 28-32-21.1, solely on grounds petitioner was pro se).

²⁷ CAL. PUB. UTIL. CODE §§ 1801 *et seq.* (Deering 1993); COLO. REV. STAT. § 40-6.5-105 (1991); IDAHO CODE § 61-617A (1992); *Idaho Fair Share*, 751 P.2d 107; ME. REV. STAT. ANN. § 1310 (1992); MICH. COMP. LAWS §§ 460.6(l), (m) (1990); MINN. STAT. ANN. § 216B.16(10) (West 1992), § 237.075(10) (1984) (telephone proceedings); OKLA. STAT. tit. 17, § 34.1 (1981); and WIS. STAT. ANN. § 196.31 (West 1992).

²⁸ While the Colorado statute contains language that limits compensation to issues "concerning, directly or indirectly, rates or charges," COLO. REV. STAT. § 40-6.5-105(1)(b), the Colorado Supreme Court has held that the commission is empowered under the state constitution to compensate intervenors in cases other than rate cases. *Mountain States Tel. & Tel. Co.*, 576 P.2d at 544.

specifically to authorize the commission to implement PURPA.²⁹ Minnesota has a generally applicable statute³⁰ and a separate statute for telephone cases.³¹ Michigan enacted intervenor funding for fuel-cost-recovery cases at the same time that it introduced the reconciling fuel-cost-adjustment charge³² for gas and electric utilities.³³

Courts have found authority to award intervenor funding in the general statutory authority of the commission. The Indiana Supreme Court has held that intervenors who successfully litigate a claim for a multimillion dollar refund to rate payers from a utility are entitled to reasonable attorney fees on a common-fund theory.³⁴ Other courts have rejected the common-fund theory.³⁵

A party's mere representation by a public-interest law firm does not typically disqualify the party from receiving intervenor funding.

In California and Wisconsin, commission and court rulings before the passage of statutory authority upheld commission jurisdiction to award funding.³⁶ The North Dakota Supreme Court has indicated that the state's Equal Access to Justice Act would ordinarily permit fees on an appeal from a commission decision but that the particular costs in question did not qualify for compensation.³⁷ Some courts, however, have held that, absent an express statutory grant of authority, a commission is without jurisdiction to award intervenor funding.³⁸

IV. Specific Conditions for Intervenor-Funding Awards

States that allow for intervenor funding typically require, as under PURPA, that the

²⁹ OKLA. STAT. tit. 17, § 34.1 (1981).

³⁰ MINN. STAT. ANN. § 216B.16(10) (West 1992).

³¹ MINN. STAT. ANN. § 237.075(10) (1984).

³² A reconciling fuel-adjustment clause is a rate provision that enables a utility to raise (or lower) its rates if actual fuel charges for a period turn out to be higher (or lower) than forecast. A reconciling fuel charge insulates the utility from the volatility of fuel price markets.

³³ MICH. COMP. LAWS §§ 460.6(1), (m) (1990).

³⁴ *Northern Ind. Pub. Serv. Co.*, 548 N.E.2d at 153. See also *Consumers' Lobby Against Monopolies*, 603 P.2d at 41, and *Senior Citizens Coalition*, 355 N.W.2d at 295 (in case decided before enactment of intervenor-funding statute, court in dictum noted potential application in utility cases of common fund, substantial benefit, private attorney general, and bad-faith exceptions to general rule requiring express statutory authority for award of attorney fees but ruled against claim on grounds that commission had not promulgated valid procedures for such claim under Administrative Procedure Act).

³⁵ *General Tel. Co. of Southeast v. Alabama Pub. Serv. Comm'n*, 356 So. 2d 612 (Ala. 1978); *Consumers League of Nev. v. Southwest Gas Corp.*, 576 P.2d 737 (Nev. 1978); *In re Illinois Bell Tel. Co.*, 98 Pub. Util. Rep. (PUR) 4th 548 (Ill. Commerce Comm'n 1988).

³⁶ *Consumers Lobby Against Monopolies*, 603 P.2d at 54 (common-fund theory in quasi-judicial proceedings of commission); *In re Southern Cal. Edison Co.*, 45 Pub. Util. Rep. (PUR) 4th at 217 (upon adoption of procedures for processing claims, commission has authority to award funds in quasi-legislative as well as quasi-judicial proceedings); *Wisconsin's Envtl. Decade v. Wisconsin Pub. Serv. Comm'n*, 49 Pub. Util. Rep. (PUR) 4th 320 (Wis. Cir. Ct. 1982) (implied authority arising from fair implication of statutory jurisdiction and no contrary statute) (Clearinghouse No. 20,262).

³⁷ *Shark*, 477 N.W.2d at 251 (assuming applicability of the mini-Equal Access to Justice Act, N.D. CENT. CODE § at 28-32-21.1, but holding that no attorney fees are due to an individual who appeared pro se).

³⁸ *Montana-Dakota Util. Co. v. Montana Dep't of Pub. Serv. Reg.*, 50 Pub. Util. Rep. (PUR) 4th 481 (Mont. Dist. Ct. 1982); *Consumers League of Nev.*, 576 P.2d at 737; *Smith v. Oklahoma Corp. Comm'n*, 225 P. 708 (Okla. 1920) (cited in *In re Oklahoma Gas & Elec.*, 58 Pub. Util. Rep (PUR) 4th 414 (Okla. Corp. Comm'n 1984)); *Idaho Power Co.*, 639 P.2d at 442.

party requesting the funding make a showing of hardship.³⁹ Where the issue has emerged, a party's mere representation by a public-interest law firm does not typically disqualify the party from receiving intervenor funding.⁴⁰

PURPA requires that a party show that it has "substantially contributed to the approval, in whole or in part, of a position advocated by" the consumer.⁴¹ In every state that permits funding, a showing must be made that the intervenor materially assisted the commission in its deliberations⁴² or substantially contributed to the proceedings.⁴³

Intervenors may not be funded if they duplicate the positions or presentations of other parties in the case. PURPA provides that state commissions may require that a "person with the same or similar interests have a common legal representative in [a] proceeding as a condition to receiving compensation."⁴⁴ California denies funding for "unproductive or unnecessary participation that duplicates the participation of

³⁹ CAL. PUB. UTIL. CODE § 1802(g) ("significant financial hardship" meaning that, in the case of an organization, the economic interest of the members is small in comparison to the costs of effective participation); IDAHO CODE § 61-617A(2)(b) ("significant financial hardship"); ME. REV. STAT. ANN. tit. 35-A, § 1310(1)(A)(3) (same); MINN. STAT. ANN. § 216B.16(10) ("insufficient financial resources to afford the costs"); WIS. STAT. ANN. §§ 196.31(1)(a), (b) ("not be possible without" a grant, or "significant financial hardship"). See also *In re Idaho Power Co.*, Case No. IPC-E-92-10 (Idaho Pub. Util. Comm'n July 14, 1992) (as between various claimants for intervenor funding, whose aggregate claims exceed the statutory maximum of \$20,000, Industrial Customers of Idaho "does not have the same degree of financial need" as the other intervenors and is awarded less than a proportional share of the available funds).

⁴⁰ *United Tenants of Albany*, 487 N.Y.S.2d at 473, *aff'd*, 496 N.Y.S. 1019; *Idaho Fair Share*, 751 P.2d at 107; *In re Washington Water Power Co.*, 107 Pub. Util. Rep. (PUR) 4th 261 (Idaho Pub. Util. Comm'n 1989); *In re Procedure for Compensation of Electric Consumers*, 38 Pub. Util. Rep. (PUR) 4th 127 (Alaska Pub. Util. Comm'n 1980). But see N.H. CODE ADMIN. R. PUC 205 (no funding for individuals "employed by any . . . [government] agency or by any organization funded in whole or in part by state or federal money unless [the organization] can demonstrate that no state or federal funds have been provided for the presentation of a PURPA issue in a commission proceeding").

⁴¹ 16 U.S.C. § 2632(a)(1). Congress intends that this language be broadly construed. H.R. REP. NO. 1750, 95th Cong., 2d Sess., *reprinted in* 1978 U.S.C.C.A.N. 7817 (cited in *Utah State Coalition*, 776 P.2d at 638).

⁴² COLO. REV. STAT. § 40.6.5-105(f) (testimony must be of "significant quality" and "materially" assist the commission in rendering its decision); IDAHO CODE § 61-617A(2)(a) (intervenor must have "materially contributed to the decision rendered"); *Idaho Fair Share*, 751 P.2d at 111 (economist's and attorney's work on settlement agreement negotiated in related case was "not relevant" to the commission's decision and thus did not "materially contribute" to the decision); MINN. STAT. ANN. § 216B.16(10) (commission must find that intervenor "has materially assisted the commission's deliberation"); *In re the Application of Northwestern Bell Tel. Co.*, 386 N.W.2d 723, 725-27 (Minn.1986) (to determine if intervenor gave material assistance to commission, commission properly considered whether the party prevailed, whether the issues it raised were unique, and whether the intervenor raised matters of more than common knowledge, but award may not be denied merely because party did not prevail).

⁴³ CAL. PUB. UTIL. CODE § 1801.3(d) ("substantial contribution means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order 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," CAL. PUB. UTIL. CODE § 1802(h)); CAL. PUB. UTIL. CODE § 1801.3(f) (no funding for "participation that is not necessary for a fair determination of the proceeding"); ME. REV. STAT. ANN. tit. 35-a, § 1310(1)(A)(2); WIS. STAT. ANN. § 196.31(1)(b). See also *Washington Water Power*, 107 Pub. Util. Rep. (PUR) 4th at 300 (boilerplate presentation not tailored to situation of Idaho justified reduction in witness fee hours).

⁴⁴ 16 U.S.C. § 2632(a)(3)(B).

similar interests. . .⁴⁵ Other states require a showing that the intervenor's position is not adequately represented by the publicly funded utility consumer advocate.⁴⁶

An important practical aspect of various intervenor-funding arrangements is the extent to which the intervenors can know, going into a case, whether they will secure funding for the work they plan to do. Without such advance assurance, the intervenor will have to do the work "on spec," that is, investing other resources to carry the work and hoping that a suit or funding claim after the case is completed will secure funds to reimburse those individuals and firms who contributed their time and resources.

The Wisconsin Public Service Commission has promulgated rules whereby applications for intervenor funding are processed within 15 days of submission and payment authorizations are made within 30 days of receipt of the claim, where possible.⁴⁷ The Michigan Utility Consumers Intervention Board awards contracts for intervention in power supply cost-recovery cases prospectively, based on proposals submitted in advance to the board.⁴⁸

PURPA does not require a determination of eligibility for funding earlier than the end of the proceeding, based on the results of the case.⁴⁹ Five states permit the commission to make decisions on whether to award intervenor funding on a case-by-case basis.⁵⁰ Two states have adopted a process whereby an intervenor can get a preliminary determination of eligibility, with the actual award to be determined based on the outcome of the proceeding.⁵¹

Under some statutes, funding is explicitly available for attorney fees,⁵² expert witness fees,⁵³ and other reasonable costs.⁵⁴ Courts have similarly upheld awards of attorney fees⁵⁵ and expert witness fees.⁵⁶ A number of statutes that allow funding do not enumerate the types of intervenor expenditures that qualify for funding.⁵⁷

V. Conclusion

Intervention in public-utility cases is more important today than at any time since the beginning of public-utility regulation. While roadblocks to intervenor funding exist, a number of states have workable statutes and regulations to promote full participation by all consumer interests. In the absence of state intervenor-funding provisions, customers of electric utilities may in many instances use the provisions of PURPA to fund their interventions.

⁴⁵ CAL. PUB. UTIL. CODE § 1801(3)(f).

⁴⁶ IDAHO CODE § 61-617(2)(c); ME. REV. STAT. ANN. tit. 35-A, § 1310(1)(A)(1). *See also* notes 14, 18, *supra*, and cases cited therein.

⁴⁷ WIS. ADMIN. CODE § PSC 3.08.

⁴⁸ MICH. COMP. LAWS § 460.6(l), (m).

⁴⁹ 16 U.S.C. § 2632.

⁵⁰ CAL. PUB. UTIL. CODE § 1801(3)(d); COLO. REV. STAT. § 40-6.5-105; IDAHO CODE § 61-617A(2); ME. REV. STAT. ANN. tit. 35-A, § 1310; WIS. STAT. ANN. § 196.31.

⁵¹ CAL. PUB. UTIL. CODE §§ 1803.(c), (d); ME. REV. STAT. ANN. tit. 35-A, § 1310(2).

⁵² 16 U.S.C. § 2632(a)(1); ME. REV. STAT. ANN. tit. 35-A, § 1310(1)(A), (B); IDAHO CODE § 61-617A(2).

⁵³ 16 U.S.C. § 26

⁵⁴ 16 U.S.C. § 2632(a)(1); CAL. PUB. UTIL. CODE § 1801; ME. REV. STAT. ANN. tit. 35-A, § 1310(1); N.H. CODE ADMIN. PUC 205.01(h) (other reasonable costs limited to 25 percent of reasonable attorney fees and expert witness fees awarded). *See also* ALASKA ADMIN. CODE tit. 3, § 48.115(i) (reimbursement available for customers who testify as public witnesses).

⁵⁵ *E.g., Northern Ind. Pub. Serv. Co.*, 548 N.E.2d at 162.

⁵⁶ *E.g., Wisconsin Envtl. Decade*, 49 Pub. Util. Rep. (PUR) 4th at 322.

⁵⁷ COLO. REV. STAT. § 40-6.5-105; MINN. STAT. ANN. § 216.16(10); WIS. STAT. ANN. § 196.31(1).