

Panel 5: Intervenor Funding

Bios and Testimony

Workshop Regarding the Creation
of the Office of Public Participation

4/16/2021



FEDERAL ENERGY REGULATORY COMMISSION



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Professor Sharon Jacobs is an Associate Professor and the John H. Schultz Energy and Natural Resources Law Fellow at Colorado Law School. She is also a board member of Colorado Law's Getches-Wilkinson Center for Natural Resources, Energy, and the Environment.

Professor Jacobs was previously a Climenko Fellow and Lecturer on Law at Harvard Law School and an associate in the energy and environmental regulatory groups at Covington & Burling LLP in Washington, D.C.

Professor Jacobs's research focuses on the impact of regulatory structure and process on policy outcomes in energy and environmental law at the federal and state levels. Recent projects include work on the separation of powers between energy agencies; the treatment of dissenting opinions in energy regulation; and methods of adapting existing legal constructs to new actors in electricity markets. Her work has appeared or is forthcoming in the *Yale Law Journal*, *Harvard Law Review*, *Columbia Law Review*, and *Iowa Law Review*, among other publications. At Colorado Law, Professor Jacobs teaches Environmental Law, Energy Law, Administrative Law, Legislation and Regulation, and related courses. She is also one of the founding contributors to *Energy Tradeoffs*, a website that publishes scholarly treatments of the energy transition and fosters nuanced, constructive dialogue around that transition.

Professor Jacobs graduated *cum laude* from Harvard Law School in 2009, where she was the Executive Articles Editor of the *Harvard Law and Policy Review*. Prior to attending law school, Professor Jacobs was a professional classical cellist. She holds a master's degree in Music Performance from the Juilliard School and a bachelor's degree in Music Performance from the Cleveland Institute of Music.

Testimony of Sharon Jacobs
Associate Professor of Law, University of Colorado Law School
Before the Federal Energy Regulatory Commission

Workshop on the Creation of the Office of Public Participation
Docket No. AD21-9-000

April 16, 2021

Introduction

Thank you for the opportunity to appear today to discuss FERC's Office of Public Participation (OPP) and the prospects for an intervenor compensation program at the agency.

My name is Sharon Jacobs and I am a professor at the University of Colorado Law School in Boulder, Colorado. I practiced energy law in Washington, D.C. for several years prior to entering academia, and I now teach energy, environmental, and administrative law to our wonderful students here at Colorado Law. I want to disclose that my students and I have been conducting research for Earthjustice to support their comments in this proceeding. The testimony I offer today, however, is my own and is not on behalf of either Earthjustice or my institution.

In my introductory remarks I would like to offer some historical and statutory perspective on the OPP and the intervenor compensation program, and to emphasize several dimensions of program design where I believe lessons can be drawn from past and current efforts at other agencies.

History

Enthusiasm for public participation in federal agency decision-making waxes and wanes. In the 1970s, a wave of enthusiasm crested, resulting in myriad proposals to enhance consumer voices in rulemaking and other proceedings.¹ Congress initiated some of these programs. Agencies created others on their own. Intervenor compensation programs, as well as new offices to represent specific consumer interests and to offer educational and technical resources to the public, sprang up at multiple agencies, including the FTC,² FDA,³ and NHTSA.⁴ Then, just as quickly as it began, the consumer participation movement ebbed. Congress never enacted a comprehensive policy on intervenor reimbursement, and a new

¹ One commentator pinpointed a meeting of the Administrative Conference of the United States in the late 1960s as the site of the "first serious consideration accorded by a governmental entity to the idea of participant compensation." Carl W. Tobias, *Of Public Funds and Public Participation: Resolving the Issue of Agency Authority to Reimburse Participants in Administrative Proceedings*, 82 COLUM. L. REV. 906, 909 (1982). However, "[t]he concept of participant compensation did not receive intensive government consideration until the mid-1970s." *Id.* at 910.

² Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637 § 202(a), 88 Stat. 2183, 2197-98 (1975).

³ Administrative Practices and Procedures; Reimbursement for Participation, 44 Fed. Reg. 59174, 59185 (Oct. 12, 1979) (codified at 21 C.F.R. § 10.200 et seq.).

⁴ Financial Assistance to Participants in Administrative Proceedings, 42 Fed Reg. 2864 (Jan. 13, 1977).

administration came into office in 1981 with new priorities.⁵ The intervenor compensation federal agencies lapsed.

Statutory Authority for the OPP

The statutory authorization for FERC's OPP, enacted as part of the Public Utility Regulatory Policies Act of 1978 (PURPA), is an artifact of this earlier movement. But Congress's delegation is written in terms broad enough to give FERC substantial discretion in crafting an OPP and an intervenor compensation program for today's regulatory and political environment. The specific duties of the office are not specified by statute.⁶ The Director of the OPP, who is afforded some independence from the Commission, has discretion to appoint employees to the office and to assign their duties. Separately, the Commission is authorized to provide compensation to intervenors in any proceeding before the Commission.⁷ I note the separation between these two provisions because, as I read the delegation, the Commission need not place responsibility for the intervenor compensation program with the Director of the OPP. Indeed, as I will argue in a moment, there are good reasons to consider vesting that responsibility outside of the OPP.

FERC does not have to start from scratch in designing its intervenor compensation program. It can draw on the frameworks and learn from the successes and failures of the earlier federal programs, as well as contemporary programs in the states, even while crafting a program that serves the Commission's particular goals at this moment in history.

As I review some of the key design features from earlier federal programs, I want to emphasize that efforts at other agencies, state and federal, to establish intervenor compensation programs suggest several challenges that FERC would do well to keep in mind. The first is how to make these programs durable. The second is how to minimize perceptions of favoritism in the dispersing of funds. The third is how to create clear rules and expectations for applicants and program administrators. The fourth is how to monitor and improve programs on an ongoing basis.

Key Features of an Intervenor Compensation Program

I will now turn to what I consider to be key features of an intervenor compensation program and specific lessons from other programs about those elements. I am happy to discuss any of this at greater length in the Q&A.

The first vital question for an intervenor compensation program is to decide **who** makes compensation decisions. As I suggested a moment ago, there are benefits to separating compensation decisions from other public outreach and support functions. Some of my own writing discusses the so-called administrative separation of powers: the separation of functions and authorities within the executive branch to serve purposes such as impartiality and legitimacy.⁸ One of the primary advantages to placing

⁵ On congressional inaction, see Tobias, *supra* note 1 at 917-18.

⁶ The statute states only that the Office shall "coordinate assistance to the public" and "coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission." 16 U.S.C. § 825q-1 (b)(1).

⁷ 16 U.S.C. § 825q-1 (b)(2).

⁸ Sharon B. Jacobs, *The Statutory Separation of Powers*, 129 *YALE L.J.* 378 (2019). See also Jon Michaels, *An Enduring, Evolving Separation of Powers*, 115 *COLUM. L. REV.* 515 (2015); Gillian E. Metzger, *The Interdependent*

allegations of preference in funding and thereby protects the Office from any resulting harm to positive relationships with stakeholders. This would bolster the OPP's status as a trusted partner and/or advocate for stakeholders within the agency.⁹

Other agencies have located intervenor compensation decisions with attorneys in the General Counsel's office,¹⁰ for example, or with a Board made up of higher-level agency officials or their designees.¹¹ Under some programs, decisionmakers in particular proceedings make preliminary recommendations about compensation although the final decision is located elsewhere.¹²

A second key question for intervenor compensation programs is **eligibility**. In FERC's case, the statute already does some of this work,¹³ but FERC may wish to follow the lead of other programs and, for example, limit the amount of compensation that can go to representatives of regulated interests,¹⁴ or clarify how decisionmakers should choose between multiple applicants who represent similar interests.¹⁵

FERC must also make choices about **compensation parameters** for any program. In other words, which services will be compensated? At what rates? When should compensation be made? Some programs have chosen to compensate participation before or during the proceedings themselves.¹⁶ While the

Relationship between Internal and External Separation of Powers, 59 EMORY L.J. 423 (2009); Neal K. Katyal, Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within, 115 YALE L.J. 2314 (2006).

⁹ It is also worth considering the independence of the OPP from the Commission. By statute, the Director of OPP is removable by the Chairman, with the approval of the Commission, only for cause, indicating that Congress sought independence for the office. 16 U.S.C. § 825q-1(a)(2)(A). Such independence from Commission oversight and control would allow OPP to serve as a more effective advocate for public participation within the agency and even in agency proceedings. See Senate Committee on Governmental Affairs, Study on Federal Regulation, Vol. III: Public Participation in Regulatory Agency Proceedings ix (1977) (noting that both the CAB Office of Consumer Advocate and the ICC Office of Rail Public Counsel were limited by their lack of full independence from direction and control by their parent agencies).

¹⁰ GAO, Fiscal Controls in the Federal Trade Commission's Public Participation Program Should be Strengthened 6 ("GAO Report") (Oct. 1, 1979) <https://www.gao.gov/assets/hrd-79-129.pdf>.

¹¹ See, e.g. Financial Assistance to Participants in Administrative Proceedings, 42 Fed. Reg. 2866-67 (Jan. 13, 1977) ("NHTSA Rule"); Reimbursement of Participants in Rulemaking Proceedings, 45 Fed. Reg. 6020, 6023 (Jan. 24, 1980) (codified at 7 C.F.R. § 12.2(f)) (assigning compensation decisions to a three-member Evaluation Board whose chair is designated by the USDA Director of Public Participation).

¹² Administrative Practices and Procedures; Reimbursement for Participation, 44 Fed. Reg. 59174, 59186-87 (Oct. 12, 1979) (codified at 21 C.F.R. §§ 10.215, 10.220) ("FDA Rule"). The CAB's pilot program allowed the Evaluation committee to consult with agency staff members whose views were relevant to the proceeding. Part 304 – Compensation of Participants in Board Proceedings, 43 Fed. Reg. 56878, 56883 (Dec. 5, 1978) (codified at 14 C.F.R. § 304.7(c)) ("CAB Rule").

¹³ The statute limits compensation to persons "whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person." 16 U.S.C. § 825q-1(b)(2). In addition, the proceeding itself must be significant, and the person's intervention or participation without compensation must constitute a significant financial hardship to them. *Id.*

¹⁴ Magnuson-Moss Act (1975), Pub. L. No. 93-637 §202(h)(1) (capping compensation for regulated interests in the FTC's intervenor compensation program at 25% of the aggregate amount paid to all persons per fiscal year).

¹⁵ FDA Rule at 59188 (codified at 48 CFR §10.220(e), (f)).

¹⁶ See, e.g. CAB Rule, *supra* note 13 at 56884 (codified at 14 C.F.R. § 304.12) (allowing partial payments as an applicant's work progresses "[f]or good cause shown").

be reluctant to make outlays without some confidence that they will be eligible for reimbursement.¹⁷

Finally, other agency efforts can inform FERC's choices about **program evaluation**. Because this is a new program, it will be particularly important to identify in advance clear goals and metrics for success – by rulemaking or otherwise – and to monitor program implementation. Some agencies evaluate public participation programs in regular reports,¹⁸ while in other cases outside monitors such as Inspectors General or legislative accounting offices report on program successes and weaknesses.¹⁹ In still other cases program evaluations come from academia.²⁰ These evaluations have assessed criteria such as whether a program encourages representation by a broad array of interests,²¹ whether it encourages participation by new voices as opposed to funding a limited number of established, repeat-players, and whether participants are satisfied with the program.²²

Conclusion

In sum, FERC has a unique opportunity to learn from past and present efforts in designing its intervenor compensation program. FERC can also be a leader in this area for a new generation of federal programs that will support more robust stakeholder input, especially by underrepresented groups, into agency decision-making.

Thank you and I am happy to answer any questions.

¹⁷ The FDA program would have allowed applicants to seek payment on a periodic basis during the proceeding if necessary to enable participation. FDA Rule at 59189 (codified at 48 CFR §10.280(b)). The FDA also choose to consider supplemental compensation if an initial award proved insufficient. *Id.* at 59188 (codified at 48 CFR § 10.275).

¹⁸ For example, the SEC's Office of Investor Advocate files reports on its activities with Congress each year. See SEC, Investor Advocate Reports to Congress, <https://www.sec.gov/advocate/investor-advocate-reports.html>. The requirement to issue these reports comes from Section 4(g)(6) of the Securities Exchange Act of 1934, 15 U.S.C. § 78d(g)(6).

¹⁹ See, e.g. GAO Report, *supra* note 10 (assessing the FTC's public participation program); California State Auditor, CPUC: Despite Administrative Weaknesses, It Has Generally Awarded Compensation to Intervenors in Accordance with State Law, Report 2012-118 (July 2013).

²⁰ See, e.g. Debra L. Scammon, Robert N. Mayer, and Gary Bamossy, "The FTC's Public Participation Funding Program: Perceptions of Applicants", 10 *Advances in Consumer Research* 479 (1983) (assessing program participants' reactions to the program); Barry B. Boyer, "Funding Public Participation in Agency Proceedings: The Federal Trade Commission Experience", 70 *Geo. L.J.* 51, 58 (1981) (observing that much of the program criticism was the result of insufficient resources and inadequate legislative guidance).

²¹ See Boyer, *supra* note 20 at 129-131.

²² See Scammon, *supra* note 20.



Michelle Cooke

Assistant Chief Administrative Law Judge

California Public Utilities Commission

Michelle Cooke is on her second stint as an Assistant Chief Administrative Law Judge at the California Public Utilities Commission (January 2018- present, February 2006-July 2011) and was an Administrative Law Judge from February 2016-December 2017 and December 1999-January 2006. During most of that time she has held a leadership role over the Intervenor Compensation Program.

From June 2012 through January 2016, Michelle was responsible for all administrative operations of the CPUC, including information technology, human resources, budget, fiscal operations, procurement, and business services where she focused on documenting internal operational processes and improving the effectiveness of the services provided to internal clients.

Between August 2011 and April 2012 Michelle was the Interim Director of the Consumer Protection and Safety Division, assisting the Executive Director on the agency's response to a catastrophic natural gas pipeline explosion that occurred in September 2010. In this capacity, she worked with the Executive Director to develop and execute strategies to improve the CPUC's safety regulation and enforcement capabilities and led the agency safety and enforcement staff for energy utilities, rail and rail transit, passenger and household goods carriers, and telecommunications companies.

Michelle started her career with the CPUC in 1990 advising Commissioners and administrative law judges as a staff expert on resource planning, demand-side management, and avoided cost issues. As a regulatory analyst, Commissioner Advisor, Administrative Law Judge, and Assistant Chief Administrative Law Judge, she has coordinated the efforts of inter-disciplinary teams of analysts, engineers, lawyers, and judges, to support CPUC decision making and implementation efforts in various program areas including energy policy, ratemaking, and financing; fire safety and resiliency; transmission siting; water; rail; and transportation.

Michelle holds a Bachelor of Arts degree in Mathematical Economics from Pomona College, has a Certificate in Business Administration, and has completed course work at the National Judicial College. Michelle is an active volunteer for the CPUC's Food from the Bar and SF-Marin Food Bank and currently serves as Board President for the Randall Museum Friends.

Prepared Remarks of Michelle Cooke

Assistant Chief Administrative Law Judge

California Public Utilities Commission

FERC 4/16/2021 Workshop

Hello, and thank you for inviting me to speak today.

My name is Michelle Cooke and I am an Assistant Chief Administrative Law Judge at the California Public Utilities Commission. Off and on, but mostly on, since the year 2000, I have had some sort of involvement in the CPUC's implementation of the Intervenor Compensation Program. Today's remarks reflect back on that 20-year experience to identify two primary things that I think FERC should consider as it develops its intervenor compensation program. These suggestions represent my own views and not necessarily those of the CPUC.

First, make sure you think first about the objectives of your program in developing its structure. If you want to promote ongoing and frequent participation by expert ratepayer representatives, your structure should be different than if your focus is one time participation. If your goal is to promote and encourage public interest group participation, your structure will be different than if you are seeking participation by individuals, corporations, or industry experts.

I believe that the statutory program structure we have in California is not well suited for one-time participants. We have seen a substantial increase in one-time participants, particularly in our policy rulemakings. In these proceedings we are seeking expertise and knowledge transfer from community-based organizations and other non-governmental organizations whose missions are unrelated to utility regulation because the rules and policies we may adopt will affect their communities. A recent example is criminal justice organizations participating in a rulemaking regarding telecommunications services for incarcerated persons. These participants bring valuable information to the table, but they are unlikely to participate in any future CPUC proceeding. Our very long, process-oriented approach to decision making means that, if the organization can even qualify, it will be a long time before they see any funds from their participation. Many of the statutory eligibility requirements work against the very participation that we want to bring into these types of cases.

While California's structure is certainly not perfect, it is easier to navigate for expert participants, one of whom you will hear from later in the panel. If the participants you seek to bring in are staffed with attorneys well versed in administrative law, they will learn and adapt to the quirks of your regulatory framework for claiming intervenor compensation. One-time participants will just be frustrated if there are too many process steps.

Second, resources are important in the perceived success of the program. By resources I mean not just funding out the door to participants, but also staff resources to process the claims in a timely manner and the tools that you provide to the intervenors to make participation and the claim process easier for them. California’s program is ultimately funded by ratepayers, either as part of customers’ utility rates, or through their payments of Commission user fees, so securing the funding to pay the awards has never been an issue for us. By most measures, California’s program has succeeded on the funding out the door measure, given that in 5 of the last 6 calendar years we have awarded over \$10 million dollars to intervenors in our proceedings.

But we’ve been much less successful on the timeliness front, we simply cannot process claims quickly enough, which can leave even expert participants in a funding deficit if they rely on intervenor compensation awards to fund their operations.

The CPUC began its Intervenor Compensation Program in 1981, and the program was codified effective January 1, 1985, with statutory modifications in 1992, 1993, 2004, and 2016. The program has grown substantially each decade.

Time Period	Claims	Decisions	Growth in claims	Claims vs decisions
1981-1990	102	80		+42
1991-2000	320	310	+218	+10
2001-2010	635	631	+315	+4
2011-2020	1088	947	+453	+141
2011-2015	487	468		+19
2016-2020	601	479		+122
2020	149	114*		+35
Jan-Mar 2020	20	23		-3
Jan-Mar 2021	43	36		+7

*second highest total number of decisions issued in a year

If you review the table in my prepared remarks, you will see that even in the infancy of the program, we were already not keeping up the pace to timely process claims.

When our program first began, the Administrative Law Judge assigned to the proceeding prepared the decision on the claim for adoption by the Commission after the decision was adopted. When I started working on intervenor compensation in the year 2000, there was no

template for claims submission or proposed decisions, and my primary job associated with the program was to nag every ALJ that had an outstanding claim until they finally broke down and took care of writing the decision, or I got so frustrated with them, that I wrote it. As you can imagine, this was no fun for anyone.

Today, we have a small staff team that drafts award decisions in consultation with the ALJ. The claims are submitted on a template intended to simplify both the claim process and drafting the award decision. But the statutory framework still requires the exercise of discretion in evaluating the substantial contribution, duplication, and reasonableness of the claim to ensure that ratepayers get value for the participation they are paying for. The drafting team must review the decisions for which compensation is claimed, the pleadings that are claimed to have made a contribution, the pleadings of other participants for duplication, and whether the hours claimed are commensurate with the contribution. It isn't just adding up the bill and making sure the math is right (which we also have to do, sometimes for years of claimed work). And remember, we now have many proceedings with multiple, sometimes more than 10, intervenors that may present a similar position. We still must put the decision on the claim before the Commission for a vote.

I really encourage you to think about a program structure that simplifies claim submittal and the exercise of discretion in making an award and pushes decisions on awards to the lowest possible level for approval. This will speed processing time and make your intervenors much happier.

With that preface, I look forward to an engaging discussion!



Jenna Schmidt

Chief Financial Officer

Public Service Commission of Wisconsin

Jenna Schmidt is the Chief Financial Officer at the Public Service Commission of Wisconsin. In her role she is responsible for leading all fiscal operations including budgeting, financial reporting, daily operations, grant management, and procurement. She uses her extensive government experience to lead cross-functional efforts to strengthen internal controls and identify opportunities to modernize and standardize operations. Jenna collaborates with teams responsible for administering various grant programs at the Public Service Commission of Wisconsin. She incorporates fiscal best practices into their procedures to realize efficiencies while continuing to ensure program integrity. Jenna also supported former Commissioner Mike Huebsch during his term as Treasurer of the Organization of MISO States.

Jenna is responsible for the administration of the Public Service Commission of Wisconsin's Intervenor Compensation Program. She collaborates with individuals across the organization on all aspects of the program and has worked diligently to bolster post-award monitoring.

Prior to her time at the Public Service Commission of Wisconsin she worked as a financial auditor for the Wisconsin Legislative Audit Bureau. She was responsible for leading audits of the state's retirement system and foster care program. She also championed efforts to transition the organization to a paperless environment. She was also elected and served a two-year term as Treasurer for the Town of Vermont where she leveraged her financial background to improve the investment of town funds to maximize returns.

Jenna earned her Bachelor of Business Administration and Master of Accountancy degrees from the University of Wisconsin-Madison. She is a Certified Public Accountant in Wisconsin. She lives in the Madison area with her husband, Mike, daughter and two rescue dogs.



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Opening Remarks of Jenna Schmidt, Chief Financial Officer

Federal Energy Regulatory Commission

Workshop on the Creation of the Office of Public Participation

Docket No. AD21-9

April 16, 2021

Panel 5: Intervenor Funding

Good Afternoon. Thank you for the opportunity to participate in this panel discussion on Intervenor Funding at the Workshop on the Creation of the Office of Public Participation. My name is Jenna Schmidt and I am the Chief Financial Officer for the Public Service Commission of Wisconsin (PSC), an independent state agency that regulates more than 1,100 of Wisconsin's public utilities. The PSC's mission is to ensure safe, reliable, affordable, and environmentally-responsible utility services and equitable access to telecommunications and broadband services.

In my role at the PSC I am responsible for the administration of the state's Intervenor Compensation program. Wisconsin's Intervenor Compensation program was created in 1983 in recognition of the crucial role that intervenors play in contributing to a robust record for the Commissioners to use when making decisions and the corresponding need for financial assistance. In order to receive assistance, intervenors must be materially affected by the outcome of the proceeding. They must demonstrate that: 1) financial hardship would exist without assistance; 2) their interest would not be represented if assistance was not provided; and 3) their interest must be represented for a fair determination in the proceeding. Intervenor compensation awards can be used for costs associated with the intervention, including attorney fees and expert witness fees.

The PSC has successfully awarded over \$13.5 million in intervenor compensation over the life of the program. The majority of the awards have been made to consumer advocacy and environmental interest groups for participation in both construction and rate setting dockets. In recent years the PSC has worked to identify ways to expand the program and encourage participation by groups that have not previously participated in PSC proceedings. For example, the PSC awarded funding to a municipality to participate in a recent transmission line

construction docket. In addition, the PSC is working to identify ways to engage with groups that represent under-represented and low-income populations and encourage their participation in PSC proceedings. In recognition of this, the PSC's recent biennial state budget request included proposed statutory language that would set aside a portion of intervenor compensation funding for low-income advocacy groups.

Until very recently the PSC's Intervenor Compensation program also included an annual grant program to support the operating expenses for a consumer advocacy group. The grant program allowed the group to receive a lump sum of funding to carry out its mission and alleviated the need to apply for intervenor compensation for each proceeding that it participated in. This allowed the consumer advocacy group to focus more time and effort on its advocacy work and increased the number of proceedings it could participate in. Earlier this month, Governor Tony Evers signed into law 2021 Wisconsin Act 24, which restructures the consumer advocacy funding model. It empowers the consumer advocacy group to set an operating budget, subject to PSC approval and statutory limitations, which better allows it to represent consumers in PSC proceedings. It also creates a stable and sustainable funding mechanism under which utilities fund the group directly.

Wisconsin's Intervenor Compensation program has been very successful in providing the necessary resources to enable intervenors to participate in PSC proceedings. The perspective that the intervenors provide is invaluable and provides the counterargument that is crucial for the Commissioners to consider as they are making decisions. As such, we are very excited about FERC's efforts to create the Office of Public Participation and provide intervenor funding. The PSC looks forward to collaborating with FERC throughout this process and is happy to provide insight into our processes.



Paul Isely

**Interim Chair, Utility Participation Board
State of Michigan**

Dr. Paul Isely is currently Associate Dean and Professor of Economics for the Seidman College of Business at Grand Valley State University. He joined the GVSU faculty in 1995 after earning his Ph.D. in Economics from Purdue University. He also holds an M.S. in Economics from Purdue University and a dual B.S. in Physics and Economics from the University of Wisconsin-Madison

Since Dr. Isely arrived at GVSU in 1995, he has taught more than 100 classes and 4,000 students. Dr. Isely's courses at GVSU include: Environmental Economics, which looks at sustainable and efficient resource usage; Business Cycles and Growth, which studies the national and regional economies; and Economics Capstone, which teaches modeling by using housing data from West Michigan.

Dr. Isely's research has led more than 50 publications which consist of peer review journal articles, local articles, research reports and grant reports. These articles have explored West Michigan's economy and its relationship to the National and State Economies. He has written or contributed to reports on storm water management and wind energy development funded through Sea Grant by NOAA. He has also valued train stations in Michigan for the Michigan Department of Transportation.

One major project was work with GVSU's Annis Water Resources Institute (AWRI), aimed at providing economic information to assist local decision makers. Dr. Isely's work with AWRI studying the economic impacts of remediation in Muskegon Lake as part of a \$10 million American Reinvestment and Recovery Act grant has become a template in the Great Lakes region for valuing the environment.

During the financial crisis Dr. Isely was part of a small team that led GVSU's Seidman College of Business public response to the crisis. Within weeks we developed a breakfast meeting for business leaders to understand the issue, provided nearly daily media support for information on the crises, and became the resource for information by the community. Since that time he has

been interviewed hundreds of times by TV, radio, and newspapers on the West Michigan economy. Over the past few years these interviews included not only local media, but also NPR, USA today, and the AP wire.

This visibility has resulted in Dr. Isely being an in-demand speaker about the local economy. Dr. Isely has averaged 15 public speaking events a year recently. The groups asking for these talks vary from company meetings to local business groups. In 2013 Dr. Isely took over the January economic forecast event held jointly with the Seidman College of Business and Colliers International.

Dr. Isely is also active in public service. His research led to his first appointment by Governor Snyder and then renewed by Governor Whitmer of Michigan to the Utility Consumer Participation Board where he is currently the Interim Chair. He is also has participated in the City of Grand Rapids Renewable Energy work group. Locally, he has also been appointed a member of the Community Collaboration Work Group and Agribusiness Work Group formed by Kent county and has participated in Strategic Planning with Grand Rapids engineering department.

Written Comments
Dr. Paul Isely Ph.D.
Interim Chair, Michigan's Utility Consumer Participation Board
4/10/2021

What is the Utility Consumer Participation Board (UCPB)?

As summarized from the UCPB grant application:

The UCPB exists to review and approve grant applications to support intervention in regulatory proceedings. Statutorily the UCPB issues grants from the Utility Consumer Representation Fund (UCRF), which receives funds generated by an annual assessment on certain regulated utilities, pursuant to PA 304 of 1982, as amended, and PA 341 of 2016. These grants may go to nonprofit organizations or local units of government in this state to ensure equitable representation of the interests of residential ratepayers or classes of residential ratepayers in cases eligible under these Acts. The grants may be used to pay eligible expenses associated with representing residential ratepayer interests in Act 304 or 341 proceedings. Coordination of representation with the Attorney General, who also intervenes in Act 304 or 341 cases, is required.

The UCPB consists of five (5) governor-appointed Board members (who are not paid), a part-time Board assistant, and support from the Michigan Department of Licensing and Regulatory Affairs (LARA).

What is funded?

The UCPB has spending authority for \$750,000 per year, of which up to \$37,500 can be used for Board administrative support beyond that provided by LARA. Although there is a little latitude, the types of cases that the UCPB can statutorily support intervenors on are:

- Gas supply plan review, cost recovery, and reconciliation (GCRC)
- Power supply plan review, cost recovery, and reconciliation (PSRC)
- General rate cases (RC)
- Integrated resource plans (IRP)
- Certificates of necessity (CN)

What is the basic process?

1. There is a standing request for proposals (RFP). Traditionally, these were due during the summer and first reviewed during the August Board meeting. More recently, the calendar of potential cases the Board can fund has become less regular, so proposals are handled on a rolling basis in Board meetings held every other month.
2. The Board reviews the written proposal, the grantee makes a short oral argument for their grant, and the grantee is available for questions at the meeting. The Board will then vote to approve the grant request, partially approve the grant request, or decline the request.

The factors the Board should consider and balance when evaluating applications are PA 341, Section 61 (12)):

- a. Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.
 - b. The anticipated involvement of the AG in a proceeding and whether activities of the applicant will be duplicative or supplemental to those of the AG.
 - c. In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.
 - d. The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.
 - e. Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.
 - f. The uniqueness or innovativeness of an applicant's position or point of view as it relates to advocating for residential utility consumers concerning energy costs or rates and the probability and desirability of that position or point of view prevailing.
3. If a grant is approved, then it is handled as a grant with reimbursement for allowable costs administered through LARA.
 4. The grantee provides updates at the Board meetings held every other month. They provide this in writing two weeks before the meeting, may provide a brief oral update at the meeting, and are available for questions from the Board.
 5. At these meetings, the grantees can also ask for adjustments – like reallocation of funds within the grant or request additional funds because of the path the case is taking.
 6. At the end of the grant cycle, the grantees provide an additional set of updates that are included in the Annual Report generated by the Board.
 7. Grant money that is not used is returned to the UCRF.

What are the strengths?

The Board is the only funding that supports exclusively a residential point of view in rate cases. The narrow objective allows more targeted intervention where it can have the largest impact. The understanding that the UCPB fills an important niche is confirmed by surveys of stakeholders done by the Institute of Public Utilities.

This process facilitates innovative approaches and strategies to intervention. It rewards grantees that have success, but also those that find new ways to further the views of residential consumers in interventions.

What are the weaknesses?

The primary weakness for the Board is that decisions are made based on the knowledge of the Board. There are no staff to review and make recommendations, so the Board has to rely

heavily on the analysis of the grantees. The Board over the last ten (10) years has always had a consumer advocate, an engineer, a lawyer, and an academic economist, so there is expertise but most information is provided by the grantees.

The scope of the types of cases that can be funded is also limited. There is great interest by groups representing residential consumers for issues outside those allowed in the statute. Often these have a socio-economic dimension. Given the limited budget, it is unlikely much of this could be funded, but it leaves out important voices.

Sources:

UCPB grant application (2018)

Institute of Public Utilities, Michigan State University April 1, 2020, White Paper

[LARA - Utility Consumer Participation Board \(michigan.gov\)](#)

[SB437 - Summary as Enacted \(2/14/2017\) \(mi.gov\)](#)



Mark W. Toney, Ph.D.

**Executive Director
TURN–The Utility Reform Network**

As executive director since 2008, Mark aligns the TURN legal, organizing, legislative and communication staff to fight for affordable, sustainable and safe energy, broadband and phone service for all California residents, with a special focus on low-income households, communities of color, immigrants, and rural communities.

Mark was appointed by Governor Newsom to the Board of Trustees of the California State Bar, and serves on the boards of ACLU Northern California, National Whistleblower Center, and California Shakespeare Theatre.

Mark served as executive director of Center for Third World Organizing in Oakland, California for four years, and as executive director at Direct Action for Rights & Equality in Providence, Rhode Island for eight years. He holds a B.A. from Brown University, a Ph.D. in Sociology from UC Berkeley, and his leadership has been recognized as a Kellogg National Leadership Fellow, Echoing Green Fellow, National Science Foundation Fellow, as well as receiving accolades from numerous organizations.

Workshop on the Creation of the Office of Public Participation

Department of Energy • Federal Energy Regulatory Commission

Docket #AD21–9–000

Panel 5: Intervenor Funding • April 16, 2021

Better Decision Making Through Intervenor Compensation

Mark Toney, Executive Director, TURN–The Utility Reform Network

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Introduction

- 1) I'd like to thank Chairman Glick, Commissioner Clements and the other FERC Commissioners for the opportunity to share some thoughts how to make Intervenor Compensation an effective component of the Office of Public Participation.
- 2) TURN was founded in 1973 and advocates for the cleanest energy at the lowest prices.
 - a. Because, people want the most green for the least green.
 - b. We want to insure that the price of greening the grid isn't cutting Black and Brown communities from the grid because they can't afford their monthly bills.
 - c. I have served as TURN executive director for the past 13 years.
- 3) It is only because of the reimbursement of reasonable attorney fees, expert witness fees, and other costs of participation that TURN has been able to retain experienced staff and consultants to represent the interests of residential customers in California Public Utility Commission proceedings on a consistent basis for over 40 years.

Making a Substantial Contribution that Qualifies for Reimbursement

- 1) Substantial contribution is not:
 - a. Stating opinions about a proposal.
 - b. Polemics about the politics of a proposal.
 - c. Name calling or accusations about the integrity of the proponents.
- 2) Substantial contribution is:
 - a. Providing evidence and data to back up claims of community harm.
 - b. Submitting testimony prepared by expert witness with unique analysis.
 - c. Developing alternative proposals that are better for planet and pocketbook.

Top Six Recommendations for a Successful Intervenor Program to Bring Diverse Community Voices, Rich Data, and Innovative Alternatives to FERC Decision Making

- 1) Adopt clear requirements and standard forms for demonstrating eligibility (e.g., a “Notice of Intent to Claim Intervenor Compensation” FERC form).
- 2) Issue rulings on eligibility within 30 days so organizations know right away.
- 3) Conduct a DC area labor market survey to determine reasonable hourly rates for attorneys, other advocates, and expert witnesses and publish *per se* reasonable hourly rate ranges tied to skills and experience levels.
- 4) Ensure staffing necessary to process Intervenor claims within 75 days of submission.
- 5) Clarify upfront how compensation will be impacted when multiple parties present similar recommendations, including clear standards for demonstrating substantial contribution in these instances, to avoid bad surprises.
- 6) Provide a mechanism, with clear standards, for advancing 50% of an organization’s estimated costs of participating in a proceeding which would be deducted from the final award or, if necessary, awards in other proceedings. The estimated costs and showing of need could be provided in the preliminary eligibility form.