



Testimony in Opposition to L.D. 1405,
“An Act to Amend Laws Governing the Public Utilities Commission
Concerning Participant Funding” and April 15 Sponsor Amendment

April 16, 2025

Senator Lawrence, Representative Sachs, and Committee Members:

My name is Seth Berry, I am Executive Director of Our Power, and I live in Bowdoinham. Our Power is a Maine nonprofit advocating statewide for energy democracy. To us, “energy democracy” means informed and empowered citizens, community-focused energy systems, and a level regulatory playing field.

Both this bill and the amendment released yesterday would move us further from a level regulatory playing field. They would undo most of your recent work to level the playing field, which allows today for less deep-pocketed entities to participate at the PUC. This work included LD 2018 three years ago, LD 395 two years ago, passed unanimously out of this committee, and the PUC’s new Chapter 840 rules, released 10 ½ months ago. Before changing this new process further, we should give it a chance to work.

Our Power’s Intervenor Compensation Experience

To date, Our Power is the only entity to have received intervenor funding under the new Chapter 840 rules. In brief, we intervened in a proceeding related to the restructuring of CMP’s parent companies. As part of that work, we were granted intervenor funding for our attorney and witness fees, but not for my own time and effort, which was substantial.

Our request for funding made clear that we did not want a penny of this funding to come from ratepayers. The PUC agreed with us. In this docket, the parent companies themselves had triggered the need for the PUC process, by seeking approval for reorganization. For this reason, our compensation came from shareholders.

Our funding did not come easily, or immediately. Other parties, including CMP, were entitled to challenge our application. They did so forcefully. Also, compensation did not come until months after the proceeding ended. Our witness and attorney waited for

months to be paid, and risked not being compensated at all. These are facts, not complaints.

I think it is fair to say that both the PUC and Our Power learned valuable things from this experience. I would be happy to talk more about how the process worked, its pros and cons, and ways to make it work better for all. Our interest in learning and testing the new process was one reason we worked so hard, at significant expense to Our Power, to break trail for others who may now be able to access commission proceedings for the first time, thanks to you and to the commission's recent reforms. In this spirit, Our Power has also agreed to speak to our experience at the upcoming annual summit of the New England Conference of Public Utilities Commissioners.

Qualifying for Funding at Present: The First Steps for Preliminary Determination

To qualify for funding in any proceeding, the burden of proof is on the applicant, and the bar is appropriately high. Specifically, current law requires the following:

- A. You are allowed to participate fully. In adjudicatory proceedings, this means qualifying to be an intervenor.
- B. Your position is "not adequately represented" by the OPA or commission staff.
- C. You are "likely to substantially contribute to the proceeding and to assist in the resolution of the issues raised in the proceeding."
- D. Participation would be a "significant financial hardship." In general, this requires that you show your tax returns.

To meet these standards, the PUC requires that you first submit a "petition for preliminary determination of eligibility for funding." Per Chapter 840, the petition must include:

- 1) All facts known to the intervenor or participant demonstrating that, but for the award of funding, participation in the proceeding will work a substantial financial hardship on the intervenor or participant. This showing may include certified balance sheets and income and expense statements for the last three fiscal years, in all cases where such information is available, together with all other relevant financial information that will aid the Commission in ascertaining the intervenor's or participant's financial resources;
- 2) A statement describing the position that the intervenor or participant intends to advocate on each issue together with a summary of the evidence and arguments that the intervenor or participant intends to present on that issue.
- 3) If the intervenor or participant plans to hire an attorney or expert witness, an estimate of the amount of attorney's fees, expert witness fees, and other reasonable

expenses to be incurred by the intervenor or participant preparing and advocating that position;

- 4) In the event that the intervenor or participant is acting as an agent of or on behalf of other persons, documentation that the intervenor or participant is the authorized representative of those represented;
- 5) A statement about the appropriateness or inappropriateness of consolidating the presentation with that of other intervenors or participants who will advocate the same or similar position with respect to that issue or issues; and
- 6) Any additional relevant information that may be required at the request of the Commission.

Even if you clear all of the bars above, you may or may not receive funding. At best, you receive a “Preliminary Determination of Eligibility.” Next, there is a window of time and an opportunity for any other party to challenge your eligibility for funding. Then, you may respond. Then, staff issue a recommendation. Then, if you’re lucky, the commission issues an order of eligibility. Then, you may expend funds or effort on the part of your attorney and/or witness, but you may or may not receive payment for as long as several months. Additionally, you are required to file regular reports to the Commission’s administrative director and general counsel. At the end of the proceeding, weeks or months or years later, you must file a final report and final request for payment. This may be challenged by other parties. If you prevail, you may receive final funding. Funds may come from other ratepayers, from the penalty fund, or from the shareholders of the party that requested or necessitated the proceeding.

Concerns about LD 1405

Under the sponsor’s amendment, an intervenor would not be eligible for funding, unless “acting in a personal capacity rather than in a business or professional capacity.” The commission is also tasked with finding a way to allow a group of such “personal capacity” individuals to qualify. It is unclear to us how the commission can reliably make this distinction between “personal capacity” and “business or professional capacity” across the universe of potential participants in its proceedings.

We have many questions about how the amendment would work in practice. Below are only a few.

- ❖ If an individual is a sole proprietor, working from home and intervening with unique concerns related to high usage charges, are they acting as a “person” or as a “business”?

- ❖ If the director of an animal shelter is seeking to participate in a proceeding, would they be closed out of intervenor funding? Or would they need to pretend they were intervening as an individual, and maybe ask board member and other volunteers to do the same?
- ❖ If more than one board member seeks funding, would each of them need to submit their own personal tax returns for the previous three years? Or would they also need to come up with “certified balance sheets and income and expense statements?”
- ❖ What exactly do the personal incomes of the director, or any of the volunteer board members of the animal shelter, have to do with the budget of the animal shelter? In this example, the shelter is the entity that pays the electrical and water bill, has its own separate budget, and has its own specific interest in the proceeding. Its interests, income and character are entirely separate from those of the volunteer board members being required to submit three years of personal balance sheets or tax returns.
- ❖ At present, a very small tribal entity has a proceeding at the PUC, related to the interest of 200 tribal members. Should the tribal government be eligible to seek funding? This bill would say no. Or could 200 specific, tribal individuals successfully put in the hundreds of hours typically required to intervene, and also to submit three years of personal financial data showing they can’t afford a lawyer and expert witness?
- ❖ What about a small municipality, with interests different from that of the OPA or Maine Municipal? Should the first selectperson intervene “as an individual” to seek funding? Or would she be acting in a “business capacity?”

A wise person once said that until we see a corporation in prison, a corporation is not the same as a person. Similarly, a small nonprofit, tribal entity, sole proprietorship, or small municipality should be considered as different from the individual persons who are most connected to it. By passing this bill with the amendment proposed yesterday, entities like these would be shut out of this important new avenue to participation.

Additional concerns

Intervenor vs Payee. Is this bill intended to get at the finances of the intervenor’s expert witness? Or their attorney? This is where the greatest costs are in a typical proceeding, but this bill does not consider the finances, or whether they may be charging lower, “public interest” rates.

Lack of Known Parallels. Many states have intervenor funding programs. To our knowledge, none is restricted to “personal capacity” participants, effectively excluding many others

and requiring personal finance disclosure. Is there a precedent suggesting that this approach will work?

Fairness. At present, most utility participation at the PUC is paid for by ratepayers. Why should arbitrary walls be erected to allow others the same privilege, if they are able to satisfy the many tests required under §1310-A and Chapter 840?

Delay and Confusion. It can take up to a year to adjust commission rules. How will this change impact participation by other organizations in ongoing dockets in the meantime?

Is There a Problem to Solve? It is not clear what need this bill is responding to, and (based on that need) whether it outweighs the benefits of allowing time for the new Chapter 840 process to play out and provide the committee with greater insight.

Conclusion

Why hamper this new program that may help level the playing field, even before we see how it is working? Why risk limiting, confusing and potentially crippling this new process you and the PUC worked so hard to create? All things considered, we respectfully urge to you vote “ought not to pass” on this proposal.

That said: If you do wish to impose restrictions on intervenor work being funded by ratepayers, Our Power urges you to apply them equally to all parties. That is, restrictions should apply equally to all who seek such funding -- including investor-owned utilities. Utilities are businesses – not “individuals acting in their personal capacity” – and yet are already compensated by *ratepayers* for most (not all) of their regulatory advocacy on behalf of *shareholders*. If we don’t want ratepayers paying for deep-pocketed entities to participate at the commission, the place to save big money is in ratepayer compensation to the utilities themselves.

Thank you, and I am happy to answer any questions you may have.



Seth Berry

P.S. – For context, the entirety of current law relating to Intervenor and participant funding at the PUC is appended.

§1310-A. Intervenor and participant funding

1. Qualification for funding. Consistent with rules adopted by the commission pursuant to subsection 3, the commission may order or provide funding in accordance with subsection 2 to an intervenor in an adjudicatory proceeding or a participant in a nonadjudicatory commission proceeding upon a finding that:

A. The position of the intervenor or participant is not adequately represented by the Office of the Public Advocate or commission staff; [PL 2023, c. 143, §4 (AMD).]

B. The intervenor or participant is likely to substantially contribute to the proceeding and to assist in the resolution of the issues raised in the proceeding; and [PL 2023, c. 143, §4 (AMD).]

C. Participation in the proceeding by the intervenor or participant would impose a significant financial hardship on the intervenor or participant. [PL 2023, c. 143, §4 (AMD).]
[PL 2023, c. 143, §4 (AMD).]

2. Funding sources. If the commission finds pursuant to subsection 1 that an intervenor or participant in a commission proceeding qualifies for funding, the commission may, except as provided in subsection 2-A and consistent with rules adopted by the commission pursuant to subsection 3:

A. Order a utility involved in the commission proceeding to compensate the intervenor or participant. Compensation provided by a utility under this paragraph may be recovered in rates; or [PL 2023, c. 143, §4 (AMD).]

B. Provide compensation to the intervenor or participant from the Public Utilities Commission Regulatory Fund established pursuant to section 116, administrative penalties and filing fees, subject to the commission's determination that funds are available for that purpose. [PL 2023, c. 143, §4 (AMD).]
[PL 2023, c. 143, §4 (AMD).]

2-A. Water utility exception. If the commission finds, pursuant to subsection 1, that an intervenor or participant in a commission proceeding involving a water utility qualifies for funding, the commission may, consistent with rules adopted by the commission, provide compensation to the intervenor or participant only from administrative penalties within the Public Utilities Commission Reimbursement Fund in accordance with section 117, subsection 3, paragraph B, subparagraph (6). [PL 2023, c. 143, §4 (NEW).]

3. Rules. The commission shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. Rules adopted by the commission pursuant to this subsection must include, but are not limited to:

(1) The process by which the commission will determine whether an intervenor or participant qualifies for funding;

(2) Identification of which expenses incurred by an intervenor or participant may qualify for funding, which types of proceedings intervenor or participant funding will be available for and the point in an eligible proceeding at which an intervenor or participant qualifying for funding will be provided with the funding;

(3) The process by which the commission will ensure that funding provided to an intervenor or participant is used properly and the process by which funding provided to an intervenor or participant that is not entirely used by the intervenor or participant may be recovered by the commission; and

(4) The methods by which the commission will ensure that the public is notified about the availability of intervenor and participant funding under this section. [PL 2023, c. 143, §4 (AMD).]

B. Rules adopted by the commission pursuant to this subsection may include, but are not limited to:

(1) Establishment of a cap on the amount of funding that a qualified intervenor or participant may be provided in a commission proceeding;

(2) Establishment of a process by which the commission will give priority under this section to qualified intervenors or participants representing environmental justice populations. If the commission establishes such a process by rule, the commission, in consultation with the Department of Environmental Protection, shall include in that rule a definition for "environmental justice populations" that is consistent with any definition for that term adopted by the department in a department rule; and

(3) Any other provisions the commission determines necessary for the implementation of this section. [PL 2023, c. 143, §4 (AMD).]

[PL 2023, c. 143, §4 (AMD).]

SECTION HISTORY

PL 2021, c. 736, §2 (NEW). PL 2023, c. 143, §4 (AMD).

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