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October 31, 2026

Rhode Island Public Utilities Commission
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Comments for the Commission's Review of Recommendations for the Creation of an Intervenor Compensation Program – **Docket No. 26-33-GEN**

To Whom It May Concern:

We offer the following comments on behalf of Acadia Center, Conservation Law Foundation, and Handy Law. Acadia Center and Conservation Law Foundation contributed to the drafting and amendment of legislation to create an intervenor compensation program[1] and our comments reflect and largely align with those efforts.

A. Eligible Proceedings

The 2026 intervenor compensation legislation, House Bill 7890 and Senate Bill 2727, creates separate intervenor compensation programs for the Public Utilities Commission (PUC, or the Commission) and the Energy Facilities Siting Board (EFSB, or Siting Board). We believe that given the current way in which the PUC and EFSB operate, it is most logical to provide for intervenor compensation separately.

We do not feel that any broad categories of Commission or Siting Board proceedings should be preemptively excluded from eligibility for intervenor compensation. What is ministerial vs. substantive can be subjective, and both the PUC and EFSB, via the existing intervention standard, can determine whether a potential intervenor has a sufficient connection to the issues at stake. Even in a reconciliation docket, the PUC and external parties do not know how much the utility has spent until it is filed. These dockets are where a lot of the utility's expenses, and ultimately ratepayer costs, come to light. Such dockets enable the utility to recover costs more rapidly than a rate case and merit prudency review not only by the PUC and the Division of Public Utilities and Carriers (DPUC), but by external parties that meet the standard for intervention.

Any docket that has the potential for a prudency review, including reconciliation dockets, should be allowed to qualify for intervention and thus intervenor compensation. This is particularly true if the burden is on the intervenor to raise serious doubt as to the prudency of the utility's investment, which would require resources such as those offered by this program to secure an expert and provide actionable evidence.

[1] 2026-H 7890 and 2026-S 2727, the "Equitable Participation in Utility Regulation Act"

B. Eligible Intervenors and Representation

Prior to responding to the specific questions in the Notice, we want to reiterate that the purpose of this program is providing historically un- and under-represented groups, often minority and environmental justice communities, the opportunity to participate in PUC and EFSB proceedings that are going to have a direct impact on those groups and communities. The intended program beneficiaries might be individuals or organizations that would have every right to participate in proceedings but for the need for financial resources to present a case. The state provides funding directly to agencies to hire attorneys and experts. The utility is allowed to recover legal and expert costs from ratepayers. Yet, right now, individuals, organizations and communities that will be impacted in a manner distinct from general ratepayers, meaning they meet the legal requirements to participate, are left on the sideline because they do not have access to resources. We hope and expect that the PUC will center this purpose and make recommendations on how best to achieve equitable participation, even if it results in procedural uncertainty or fiscal impacts. Justice cannot be dependent on keeping existing actors comfortable or reinforcing financial barriers to participation.

Yes, an individual should be eligible to seek intervenor compensation on behalf of an unorganized group of individuals, and yes, individuals, organizations or groups should be required to identify the persons or constituency they represent. This disclosure holds no bearing on the governance or membership of an organization, group, or unorganized group of individuals, who retain their right to free association.

The recipient eligibility that we recommend as per 2026-H 7890 and 2026-S 2727 are that the party is either (A) An individual person or an individual person on behalf of an unorganized group of individual persons; or (B) An organization organized under the provisions of Internal Revenue Code § 501(c)3. For clarity, under (A) the goal is to identify who would receive funds from the Intervenor Compensation Program and does not alter the requirement to be an attorney to represent others before the PUC or EFSB. The lawyer representing an individual or group of individuals should not be required to be the same person to receive funds from the program on behalf of these individuals. These eligibility standards do not alter or supersede existing participation standards that require intervenors to (1) have a right to participate conferred by statute, (2) an interest which may be directly affected and which is not adequately represented by existing parties, or (3) any other interest of such nature that the their participation may be in the public interest.[2]

C. Financial Need

The statutory language in 2026-H 7890 and 2026-S 2727 defining "significant financial hardship"[3] is intentionally broad to allow the PUC and EFSB to establish their standard in regulations or rulemaking. By not legislating financial need, the administrators of the intervenor compensation program would retain the flexibility to evolve the standard over time, if needed.

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[2] R.I. Code of Regs. 810-RICR-00-00-1.14(B)(1)-(3).

[3] "Significant financial hardship" means that the intervenor cannot afford, without undue hardship, to pay the costs of effective participation, including legal fees, expert witness fees, and other reasonable costs of participation.

Yes, applicants should be required to demonstrate that they lack other reasonable and viable sources of funding, filed confidentially to the PUC or EFSB. For example, individuals may be required to do the same financial disclosure as a public official, and organizations would be required to submit specific financial statements. In Maine, required application information must include:

> *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 [this information will be confidential and provided only to Commission];*[4]

Rather than citing the variety of ways in which this term has been interpreted across the many U.S. states that have adopted intervenor compensation programs, we will endeavor to engage in future regulatory proceedings where the PUC and/or EFSB seek to establish specific guidelines and application requirements.

D. Costs and Compensation

The statutory language in 2026-H 7890 and 2026-S 2727 provides intervenor compensation for legal fees, expert witness fees, and other reasonable costs to an intervenor in Commission or Siting Board proceedings. "Other reasonable costs" means either out-of-pocket expenses directly incurred by an intervenor in order to present their case and/or a percentage to cover overhead costs that are inextricably tied to both the case and an organization's management and administration. Similar to financial need, the types of costs eligible for compensation are intentionally broad to allow the PUC and/or EFSB to establish their standard in regulations or rulemaking. By not legislating the costs eligible for compensation, the administrators of the intervenor compensation program would retain the flexibility to evolve the standard over time, if needed.

In considering the appropriate level of funding to provide intervenors, we must begin with recognizing the significant imbalance of resource availability to a utility and an intervenor. The utility gets to use ratepayer funds to prepare and litigate its case for why they need to raise more money from ratepayers along with why the PUC should disregard the arguments made by intervenors. They have nearly unlimited access to ratepayer dollars to pursue their own interests. This program cannot rectify this lack of parity; though it will provide a modicum of resources to provide a level of equity between the parties. Notably, under the existing proposal, intervenor support is capped at $50,000, per intervenor and proceeding, whereas Rhode Island Energy faces no comparable cap on its intervention costs and enjoys a forgiving standard for PUC to approve ratepayer recovery of those costs. For example, the 2026 Distribution rate case led to $2,086,796

[4] Maine Public Utilities Commission. **Application Information and Instructions for Intervenor and Participant Funding.** https://www.maine.gov/mpuc/about/intervenor-funding

being charged to gas customers[5] and $2,314,678 to electric customers[6] for witness, legal, and other reasonable expenses, including the Division's use of ratepayer funds via an assessment on the utility.

We agree with the proposed grant limit on the amount of compensation per intervenor, as outlined in 2026-H 7890 and 2026-S 2727. Grants shall be in the amount of fifty thousand dollars ($50,000), with the amount being adjusted every five (5) years consistent with the consumer price index. Ten percent (10%) of the approved grant may go to non-legal or non-expert witness fees. Thus, administrative costs would not be allowed to exceed $5,000 for a $50,000 grant. The proposed legislation was also intentionally designed as an upfront grant program to facilitate equitable participation. Compensation shall be offered prospectively, in the form of a grant, with a reconciliation mechanism based on actual costs in the relevant Commission or Siting Board proceeding.

E. Funding

The proposal for how intervenor compensation is funded in 2026-H 7890 and 2026-S 2727 reflects the recommendation of Acadia Center, CLF and Handy Law.

Funds should be provided as an upfront grant; this is a critical element of an equitable program design, as it addresses the initial financial barrier to hiring a lawyer to qualify for intervention in a proceeding. Grants would be fixed at $50,000, and available for less if the request is less. Unspent money would be returned – there would be a reconciliation mechanism based on actual costs in the relevant Commission or Siting Board proceeding.

For sources of funding, we propose a combination of state funding and ratepayer funding, with a preference for state funding. While the bill proposes a practical limitation on the intervenor compensation programs – $300,000 for the PUC program and $300,000 for the EFSB program – we believe that *all* qualified intervenors with significant financial need should be funded. Utilities do not have a cap on resources to participate in regulatory proceedings and can use customer revenue to finance participation. So long as there are no caps on a utility's ratepayer assessment for appearing before the PUC and EFSB, there should not be an arbitrary cap on total program funding for the substantive participation of other interested and qualified stakeholders in a range of proceedings.

If ratepayer funded, we recommend that the statute clarify that the PUC and EFSB may levy payments for intervenor compensation on investor-owned utilities, as opposed to a utility serving more than 100,000 customers. While utility size has been a common parameter across statutes, the business model and thus incentives of an investor-owned utility requires regulatory oversight in the absence of democratic governance or market competition. As noted in 2026-H 7890 and 2026-S 2727, payments from a utility would only be used to fund intervenors in proceedings in which the

[5] RIPUC Docket No. 25-45-GE. Schedule SAB-4-GAS (C). https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2026-08/Schedule%20SAB-4-GAS%20%28C%29.pdf

[6] RIPUC Docket No. 25-45-GE. Schedule SAB-4-ELEC (C). https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2026-08/Schedule%20SAB-4-ELEC%20%28C%29.pdf

utility is involved, with the PUC and/or EFSB establishing this standard in rulemaking, i.e. funding from an electric company and presumably electric ratepayers would not fund an intervenor in a water proceeding.

With the existence of a cap on total intervenor compensation program funding, the programs should be first come, first served. Following the initial qualification for intervenor funding, the PUC and EFSB should not make further substantive judgements regarding intervenor qualifications or financial hardship. The programs should track the number of qualified applicants who do not receive funding and the total value of unfunded requests to document demand and inform potential increases to the cap in subsequent years.

Regarding unused funds at the end of a fiscal year, funds for each intervenor compensation program – PUC and EFSB – shall be carried forward to its specific account in subsequent years. With a cap, this reduces the appropriation required to bring each program's account to $300,000 for the subsequent fiscal year.

F. Administration and Process

A PUC and/or EFSB rulemaking process, with notice and opportunity for public comment, shall determine how the intervenor compensation programs will be administered. If funds are appropriated by the General Assembly, then the PUC and EFSB may use up to 10% of its program budget to hire a consultant to assist with the administration of the program. A general timeline is proposed in the bill, but substantive application details should be established in rulemaking, including program rules, forms, and filing requirements.

Recipients of intervenor compensation, or grantees, shall abide by the following requirements, as per 2026-H 7890 and 2026-S 2727:

(1) Grantees shall not withdraw from the proceeding.
(2) Grantees shall provide a report, no later than thirty (30) days from issuance of a written order, that details the expenditure of grant funds.
(3) Grantees shall use funds solely for proceedings before the commission, meaning funds may not be used for any appeal of final commission decisions.
(4) Grantees shall use funds solely for the purposes set out in its application to the commission.

Further, if the grantee's award exceeds actual spending, excess funds shall be returned, and the PUC or EFSB may order the return of funds if there is a breach of conditions. If improperly spent funds are not returned, the recipient should be barred from future participation until such time as restitution is made to the program.

G. Additional Considerations

It is critical to ensure expedient decision-making and distribution of grants to enable full participation in proceedings. Notably, while a party can challenge whether an intervenor meets the intervention standard, the request for intervenor funding should not be a contestable issue. We note a

recent failure of Maine's intervenor compensation program, where, due to a utility objection to funding, the compensation for a qualified intervenor's expert was delayed to such an extent that it was nearly too late to allow his participation. The procedural schedule had to be amended significantly impacting all parties. Allowing such challenges to funding can also have the practical impact of allowing other parties, including a utility, to influence an intervenor's free choice of lawyer and expert.

Education and outreach will also be critical to the success of an intervenor compensation program. We recommend that the PUC and EFSB develop accessible, multi-lingual and easily comprehensible web-based educational materials, including forms and templates. We recommend a virtual and in-person outreach program to educate prospective grantees and the public about the intervenor compensation grant program.

Additional ideas to improve meaningful participation in Commission and Siting Board proceedings include eliminating the requirement that parties need to be represented by a lawyer to intervene. A searchable database of Commission and Siting Board documents would also help facilitate access and participation in proceedings. We recognize that these issues are not expected to be addressed in the context of an Intervenor Compensation Program. We would be happy to follow up with PUC staff regarding additional mechanisms to improve meaningful participation at the PUC and EFSB.

Finally, we ask that the PUC consider fair and equal treatment in the creation of an intervenor compensation program. A $50,000 intervention should not receive greater scrutiny than utility expenditures and ratepayer costs that exceed millions of dollars annually.

The July 2026 report from Environmental Defense Fund and Gridworks highlights the value of intervenor compensation and can offer practical guidance for the design of an intervenor compensation program for Rhode Island: *Powering Participation: How Intervenor Compensation Can Strengthen Utility Commission Decision-Making*.

Thank you for your consideration.

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