# **65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 840: INTERVENOR AND PARTICIPANT FUNDING**

SUMMARY: This rule describes the eligibility requirements for the award of intervenor and participant funding pursuant to 35-A M.R.S.A. §1310-A.

**1. DEFINITIONS**

 A. **Adjudicatory Proceeding.** “Adjudicatory Proceeding” means any proceeding before the Commission in which the legal rights, duties or privileges of a specific person or persons are required by constitutional law or statute to be determined after an opportunity for hearing.

 B. **Commission**. "Commission" means the Maine Public Utilities Commission.

 C. **Consumer-Owned Public Utility.** “Consumer-owned public utility means any public utility wholly owned by its customers, any municipal or quasi-municipal district and any public utility department.

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D. **Environmental Justice.** “Environmental Justice” means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

E. **Environmental Justice Populations.** “Environmental Justice Populations” means geographically or demographically defined groups of people with median household income and employment below the statewide median household income and unemployment rate who have environmental justice concerns. “Environmental Justice Populations” also include other similarly situated population groups as determined by the Commission in consultation with the Department of Environmental Protection.

 F. **Expert Witness Fees**. "Expert witness fees" means any documented costs incurred by an intervenor for the services of an expert witness in preparing and delivering testimony on an issue meeting the criteria for eligibility in Section 2.

 G. **Funding.** “Funding” means reimbursement by the utility or Commission of reasonable attorney’s fees, expert witness fees, and other reasonable expenses incurred by the eligible intervenor or participant.

 H. **Intervenor**. "Intervenor" means any person who is permitted to intervene in a Commission adjudicatory proceeding as provided for in Chapter 110 of the Commission’s Rules.

 I. **Investor-Owned Public Utility.** “Investor-owned public utility” means a public utility other than a consumer-owned public utility as defined in Section 1(C).

 J. **Other Reasonable Expenses**. "Other reasonable expenses" means necessary out‑of‑pocket expenses incurred by the intervenor or participant that are directly attributable to the intervenor's or participant’s preparation, advocacy, and participation in a Commission proceeding to the extent that such expenses are determined reasonable by the Commission. Any travel expenses authorized for funding will be reimbursed at governmental rates as required by statute.

 K. **Non-Adjudicatory Proceeding.** “Non-adjudicatory Proceeding” means a rulemaking proceeding or any Commission proceeding that is not an adjudicatory proceeding.

 L. **Participant.** Means a person that actively participates in a non-adjudicatory Commission proceeding.

 M. **Person.** “Person” means an individual, partnership, corporation, governmental entity, association or public or private organization that has legal status.

 N. **Proceeding.** “Proceeding” means any proceeding conducted by the Commission under the authority of Title 35-A of the Maine Revised Statutes.

 O. **Reasonable Attorney’s Fees**. "Reasonable attorney's fees" means the number of hours reasonably expended by the intervenor's or participant’s attorney multiplied by a reasonable hourly rate, taking into account prevailing market rates including whether the rates are comparable to those in the community for attorneys of comparable skill, experience and reputation.

 P. **Rulemaking Proceeding.** “Rulemaking Proceeding” means a proceeding conducted pursuant to Maine’s Administrative Procedures Act, Title 5, Chapter 375.

 Q. **Substantial Financial Hardship**. "Substantial Financial Hardship" means that the cost to the intervenor of the intervention, including the cost of foregone opportunities, when compared to the intervenor's available resources impairs the functioning of or constitutes a real hardship on the intervenor as determined by the Commission.

**2. ELIGIBILITY FOR INTERVENOR OR PARTICIPANT FUNDING**

 An intervenor or participant is eligible for funding if:

 1) The position advocated by the intervenor or participant is not adequately represented by the Public Advocate or the Staff of the Commission;

 2) Participation in the proceeding by the intervenor or participant would impose a substantial financial hardship on the intervenor or participant;

 3) 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

 4) The intervenor or participant complies with the eligibility determination requirements in Sections 3 and 6 of this rule.

**3. PETITION FOR PRELIMINARY DETERMINATION OF ELIGIBILITY**

 A. **Preliminary Determination**. An intervenor or participant must petition the Commission to make a preliminary determination of eligibility for funding. The petition must include the information specified below and be served on all persons participating in the proceeding. Confidential financial information included in the petition will only be provided to the Commission.

 B. **Contents of Petition**. A petition for preliminary determination of eligibility for funding 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.

 C. **Timing of Petition.** A petition for preliminary determination may be filed at any time

 during the proceeding. An award of funding may not include expenses incurred prior to

 filing of the petition except for expenses incurred that relate to the preparation of a

 petition for intervention or a petition for a preliminary determination of eligibility for

 funding.

**4. OBJECTIONS TO ELIGIBILITY**

 A. **Filing of Objections**. Within seven days after the filing of a petition for a preliminary determination of eligibility for funding, any party to or participant in the proceeding may object to the request for funding by filing in the Commission’s case management system referencing the appropriate docket.

 B. **Hearing on Objections**. If objections are received, the Commission may hold a hearing on the objections. If no objections are received, the Commission may, on its own motion, require a hearing on the request for intervenor or participant funding.

**5. CERTIFICATION OF PRELIMINARY ELIGIBILITY**

 A. **Determination of Eligibility**. Within fourteen days after the filing of the petition for preliminary determination of eligibility, the Commission shall enter an order with respect to each intervenor or participant who has filed for funding. The Commission may extend this time period in the event objections to eligibility are filed. The Commission order must state, with respect to each intervenor or participant:

 1) Whether the intervenor or participant is eligible for funding based on the criteria set forth in section 2 of this rule;

 2) Whether those intervenors or participants advocating similar positions must consolidate their representations by requiring common legal representation chosen by the intervenors or participants. No award of funding will be made to those intervenors or participants who fail to consolidate their presentations after being so ordered by the Commission. This does not preclude consolidated intervenors or participants from retaining more than one legal representative so long as only one representative enters an appearance on behalf of the consolidated intervenors or participants. In the case where more than one legal representative or expert witness is retained, the intervenors or participants may divide the funding among the legal representatives.

 B. **Determination of Funding Amount.** An order concluding that an intervenor or

participant is eligible for funding pursuant to section 5(A), must include a cap on the

 funding amount. The Administrative Director of the Commission, in consultation with

 the General Counsel for the Commission, will determine the funding cap.

 C. **Availability of Funds.** Any funding to be paid from the regulatory fund, or any other

funding source authorized by statute, is contingent on the availability of such funds. In

 the event funds are limited, priority will be given to intervenors or participants

 representing environmental justice populations.

 D. **Change in Financial Status**. A determination of preliminary eligibility under this rule is subject to change in the event the financial status of the intervenor or participant changes prior to the conclusion of the proceeding. An intervenor's or participant’s eligibility for funding is reviewable until the conclusion of the proceeding. It is the obligation of the intervenor or participant seeking funding to notify the Commission and parties involved of any change in financial position.

 E. **Forms or Contracts.** Each eligible intervenor or participant may be required to execute a State required form or contract with the Commission that contains requirements for payments and other provisions. The Commission Staff will assist intervenors or participants in executing any State required forms or contracts.

**6. FILING OF INFORMATION AND DISBURSEMENT OF FUNDING**

 A. **Monthly Filings.** Thirty days after a Commission preliminary determination of eligibility and each thirty days thereafter, the intervenor or participant must file a report that contains information detailing the expenses that were incurred within the prior thirty days that are eligible for funding. The timing of this filing requirement may be modified by the Commission’s General Counsel.

 B. **Periodic Funding Disbursement.** Upon request of the intervenor or participant, and a showing of need, the Commission may provide periodic funding no less than every thirty days. Such periodic funding will not be subject to refund at the conclusion of the proceeding.

C. **Final Funding Disbursement.** Every intervenor or participant who received a preliminary determination of eligibility for an award of compensation must file a final request for funding within 30 days of the close of the proceeding containing the information listed below:

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 1) How the intervenor or participant assisted in the resolution of the issues raised in the proceeding; and

 2) An itemized statement of all attorney’s and expert witness fees and other reasonable expenses incurred by the intervenor or participant in the preparation and advocacy of the intervenor's or participant’s position in the Commission proceeding.

 D. **Filing of Objections**. Within seven (7) days after submission of the intervenor's or the participant’s claim, any person participating in the proceeding may object to the intervenor's or participant’s claim.

 E. **Criteria for Funding.** The Commission will order funding upon a determination that expenses were reasonably incurred, and that the intervenor or participant acted reasonably in advocating for the positions for which preliminary eligibility was determined.

 F**. Timing of Funding.** The Commission will make its final determination of the amount of funding within thirty days of the intervenor or participant filing for a disbursement of funding under this section.

 G. **Payment Date.** The utility or the Commission, as appropriate, must pay the funding amount as ordered by the Commission within thirty days after the Commission's final order awarding funding consistent with the provision of a contract as may be required pursuant section 5(E) of this Chapter.

**7. SOURCE OF FUNDING**

A. **Investor-Owned Public Utility Initiated Adjudicatory Proceedings.** For adjudicatory proceedings initiated by an investor-owned public utility, as determined by the Commission,funding may be provided through filing fees, utility payments subject to recovery, the regulatory fund, funds from administrative penalties, or any other funding source authorized by statute.

 B. **Consumer-Owned Public Utility Initiated Adjudicatory Proceedings.** For adjudicatory proceedings initiated by a consumer-owned public utility, as determined by the Commission, funding may be provided through the regulatory fund, funds from administrative penalties, or any other funding source authorized by statute.

 C. **Water Utility Exception.** For Commission proceedings involving a water utility, funding shall be provided through administrative penalties or any other funding source authorized by statute.

 D**. Commission Initiated Proceedings.** For Commission initiated proceedings, funding may be provided through the regulatory fund, funds from administrative penalties, or any other funding source authorized by statute.

8. **NOTICE TO PUBLIC OF AVAILABILITY OF FUNDING**

Notice of the availability of intervenor and participant funding, in a form determined by the Commission, must be prominently posted on the Commission’s website and included in all notices of proceedings. The Commission must provide notice of the availability of intervenor and participant funding through additional means as determined appropriate by the Commission.

**9. WAIVER**

 To the extent permitted by law, where good cause exists, the Commission may permit deviation or waiver from this Chapter. The Commission or the presiding officer may grant a request for a deviation or waiver upon a finding of good cause and a finding that the deviation or waiver will not impair the policies of this Chapter.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 111, and 1310-A.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission’s Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2022-00299, issued on May 29, 2024. Copies may also be obtained from the Administrative, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on May 17, 1996. It was filed with the Secretary of State on May 17, 1996 and became effective on May 22, 1996.

CONVERTED TO MS WORD: May 17, 2005

EFFECTIVE DATE: This amended rule was approved as to form and legality by the Attorney General on May 10, 2013. It was filed with the Secretary of State on May 13, 2013 (filing 2013-113), and became effective on May 18, 2013.

EFFECTIVE DATE: This amended rule was approved as to form and legality by the Attorney General on July 3, 2024. It was filed with the Secretary of State on July 3, 2024, filing 2024-140 and became effective on July 8, 2024.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 19, 2025