

CR 94-111

Certificate

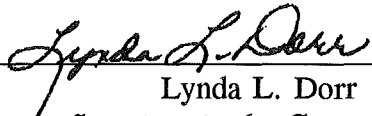
STATE OF WISCONSIN)
) SS
PUBLIC SERVICE COMMISSION)

File: 1-AC-142

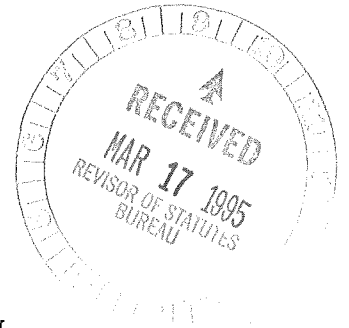
I, Lynda L. Dorr, Secretary, of the Public Service Commission, and custodian of the official records, certify that the annexed rules, relating to intervenor compensation, were duly approved and adopted by this Commission on March 14, 1995.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Commission at 610 North Whitney Way in the City of Madison, this 15th day of March, 1995.


Lynda L. Dorr
Secretary to the Commission

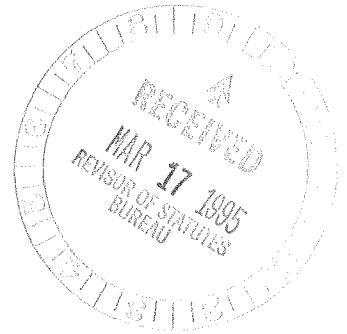
PUBLIC SERVICE COMMISSION OF WISCONSIN



H:\letter\lldcert.pdr

6-1-95

DATE MAILED
MAR 15 1995



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of the Proposed Revision of
Chapter PSC 3, Wisconsin Administrative
Code - Intervenor Compensation

1-AC-142

ORDER OF THE
PUBLIC SERVICE COMMISSION OF WISCONSIN
ADOPTING RULES

To repeal and recreate chapter PSC 3, Wisconsin Administrative Code, relating to
intervenor compensation.

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Statutory Authority: 196.02(3) and 196.31(3), Stats.
Statutes Interpreted: 196.31, Stats.

Currently, the rule requires submission of applications for compensation not more than 15 days after notice of the prehearing conference or not more than 15 days after notice of hearing. However, the intervenor does not know the issues for hearing until after the prehearing conference. If compensation applications are made not more than 15 days after notice of hearing, there is not adequate time to prepare testimony. The proposed rule change permits compensation applications 15 days after the prehearing when the issues are known or, if there is no prehearing, 30 days before the date of hearing. In either case, there is adequate time to identify the issues and prepare testimony.

Docket 1-AC-142

In order to facilitate the Commission's review of compensation applications, the proposed rule requires additional information about the purpose of the intervention, a discussion of the issues that the intervenor plans to address, how the issues affect the intervenor's interest, and an explanation of ideas that the intervenor deems important.

To improve accountability and facilitate review, the proposed rule requires applicants to show revenue and expenses by program activity for the previous and current fiscal years, to identify uncommitted funds, to show which part of the budget will cover the proceeding for which compensation is requested, and to explain why more of the intervenor's own funds cannot be utilized for the proceeding.

The proposed rule provides an opportunity for the applicant to identify in-kind contributions.

The proposed rule would require organizations with annual revenues of \$30,000 or more to describe the duties of paid and unpaid staff in relation to the program activities of the organization. This annual revenue amount will be adjusted by Commission order in future years to account for inflation.

The proposed rule would require the applicant to demonstrate it has the ability to represent the interest it espouses.

To assist in Commission planning for disposition of intervenor compensation funds, the proposed rule requires a list of other Commission proceedings in which the intervenor

Docket 1-AC-142

intends to participate during the current year. At the present time, the rule asks for a list of proceedings for the preceding 12 months.

The proposed rule would allow staff to approve requests for \$500 or less and to transfer funds from one accounting category to another. The current rule does not delegate this authority to staff.

The proposed rule requires a supporting affidavit attesting to the correctness of claims for payment. For organizations receiving \$30,000 or more of intervenor compensation in one year, the proposed rule requires certification that the funds were spent in accordance with the intent of the award and with this chapter.

These proposed changes provide more detailed financial information to enable the Commission to assess more completely the applicant's financial needs and improve the intervenor's accountability, Commission planning, and efficiency of the process.

STATUTORY AUTHORITY

The Public Service Commission of Wisconsin has authority to issue rules regarding intervenor compensation pursuant to ss. 196.02(3) and 196.31, Stats.

PROPOSED RULES

The Commission proposes to repeal and recreate Chapter PSC 3, Wisconsin Administrative Code, as shown in the attached Appendix.

PUBLIC HEARING

Pursuant to the Commission's Notice of Investigation and Hearing issued on June 14, 1994, and published in the July 1, 1994, Wisconsin Administrative Register, public hearing was held on the proposed rules before Examiner John Crosetto in the Hill Farms State Office Building on July 25, 1994.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Utilities and others subject to these rules, including municipally owned utilities, may experience modest increases in the number of requests for intervenor compensation. These small increases, however, should have no discernible effect on utilities or others subject to these rules, including small telecommunications utilities that qualify as small businesses. The proposed rules will have no effect on other small businesses.

Docket 1-AC-142

FISCAL ESTIMATE

There will be no fiscal impact of the proposed rules on state or local units of government.

EFFECTIVE DATE

These rules will take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22, Stats.

ENVIRONMENTAL ANALYSIS

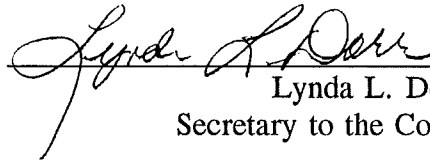
This action is classified as a Type 3 action according to PSC 2.90(3), Wis. Adm. Code. No unusual circumstances have come to the attention of the Commission that would require further environmental review. It consequently requires neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment.

Docket 1-AC-142

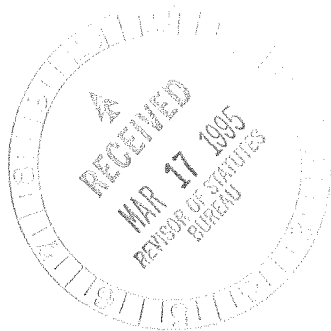
These proposed rules were forwarded to the legislature for review pursuant to s. 227.19, Stats. They will take effect as final rules on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22, Stats.

Dated at Madison, Wisconsin March 14, 1995

By the Commission.


Lynda L. Dorr
Secretary to the Commission

LLD:DLP:mad:\h:\order\1AC142.ORD.



APPENDIX

PROPOSED RULES

SECTION 1. PSC 3 is repealed and recreated to read:

PSC 3
INTERVENOR COMPENSATION

PSC 3.01 DEFINITIONS. In this chapter:

(1) "Commission" means the public service commission of Wisconsin.

(2) "Recipient" means a person whose application for intervenor compensation has been granted by the commission regardless of whether the commission has made any payment to the person.

PSC 3.02 ELIGIBILITY. (1) To be eligible for compensation under this chapter, a person who seeks compensation in order to intervene in a commission proceeding shall be all of the following:

(a) A customer of the utility which is the subject of the proceeding; or someone who may be materially affected by the outcome of the proceeding.

(b) Someone for whom full intervention in the proceeding would cause significant financial hardship without compensation from the commission.

(c) Someone who represents an interest material to the proceeding which but for an award of compensation would not be adequately represented.

(d) Someone whose interest must be represented for a fair determination in the proceeding.

(e) Someone who has been granted full party status and who will participate in the proceeding as a full party.

(2) In determining whether an applicant for compensation meets the criteria of sub. (1)(c) and (d), the commission shall consider information presented by its own staff and by other persons who indicate they will be presenting information in the proceeding.

NOTE: See s. 196.31(1)(b), Stats., about how a person can apply for intervenor compensation after participating in a commission proceeding.

PSC 3.03 APPLICATIONS FOR COMPENSATION. (1) Any person may apply to the commission for intervenor compensation under this chapter. Applications for intervenor compensation relating to a particular proceeding shall be received by the commission not more than 15 days after the prehearing conference, or if there is no prehearing conference, 30 days before the hearing. The commission may extend these time limits for good cause shown or on its own motion.

(2) The application for compensation shall be on a form supplied by the commission upon request and shall contain the following information:

(a) The applicant's name and address. For an organization, the names, addresses and titles of the members of the governing body, and a description of the organization's general purposes, size and structure are required.

(b) The proceeding for which the compensation is requested.

(c) Specific information about the purpose of the intervention, including a discussion of the issues the applicant plans to address and how they affect the applicant's interest in the proceeding. An explanation is required of the ideas or viewpoints the applicant believes are substantive, novel or significant, and why their presentation contributes to a full and fair determination of the issues involved in the proceeding.

(d) A statement of the amount of funds requested, including an itemized statement of the services and expenses to be covered by the requested funds.

(e) The financial status of the applicant, including:

1. A revenue and expense summary by program activity, including fund raising, education, research, and lobbying, for the previous and current fiscal years.

2. A list of current assets and liabilities, including any uncommitted funds.

3. The applicant's official budget for the current fiscal year and a showing of which part of the intervenor's budget will cover expenses related to the proceeding for which compensation has been requested. An explanation why more of the applicant's funds cannot be devoted to the proceeding is required in order to show that participation would cause a significant financial hardship to the applicant.

4. The value of non-cash contributions, if any, made by the applicant to further the goals of the intervention.

5. For an organization with gross annual revenues of at least \$30,000, a description of duties of paid and unpaid staff in relation to program activities of the organization. The commission shall adjust this dollar figure biennially by the Consumer

Price Index, as defined in s. 16.004(8)(e)(1), Stats., in 1995 or thereafter, to account for inflation or deflation. The commission shall include a statement showing the current dollar figure with its application forms.

(f) A demonstration that the applicant has the ability to represent the interests it espouses, through the expertise of its consultant, its attorney, or itself, in the matter at issue in the proceeding.

(g) A list of the other formal commission proceedings in which the applicant plans to participate in the current fiscal year, including the source of funds which will support participation in each proceeding.

(3) The applicant shall file an original and five copies of the application with the commission and shall serve one copy on each utility involved in the proceeding.

NOTE: The application for compensation [Form PSC DAS-212 (9-91)] is available from the division of administrative services at the commission.

PSC 3.04 COMPENSABLE COSTS. (1) Compensation shall not exceed the actual and reasonable expenses authorized by the commission and incurred as a result of the applicant's participation as a full party in a commission proceeding.

(2) Expenses compensable under this chapter include:

- (a) Attorney fees.
- (b) Expert witness fees.
- (c) Cost of clerical services.
- (d) Preparation of studies, displays and exhibits.
- (e) Travel and subsistence costs.
- (f) Other costs associated with the intervention and actually incurred.

(3) Compensation paid to the staff of a group or organization shall be limited to the rate of reimbursement normally paid by the applicant for comparable staff services, and shall not exceed the rates authorized for employees of the commission. Compensation of an applicant's contractor may be paid at prevailing market rates for the kind and quality of service. Compensation for travel, subsistence, and miscellaneous expenses shall not exceed the rates authorized for commission employees.

PSC 3.05 PROCESSING OF APPLICATIONS. (1) Within 15 days of submission, if practicable, the commission employee assigned to process the application shall submit it and other relevant material to the commission. The employee may include a recommendation as to whether, and to what extent, the applicant should be compensated.

(2) The assigned employee may request additional information necessary to process the application and may call a conference among applicants to promote and coordinate joint presentations, if similar interests exist. The commission may require cooperative efforts as a condition of compensation.

(3) The assigned employee may recommend approval of all or part of an application for compensation only if he or she finds that the applicant has met the eligibility requirements of s. PSC 3.02 and the application has met the requirements of s. PSC 3.03.

(4) The assigned employee may prepare a written recommendation that compensation should be granted in a given amount or denied. The recommendation shall be forwarded to the commission for its approval or modification. The commission shall mail its decision to the applicant and the utility which is the subject of the proceeding.

(5) Staff may approve compensation requests for \$500 or less and requests to transfer funds from one accounting category to another.

(6) The commission may, on request or on its own motion, reconsider a decision regarding any application for compensation.

PSC 3.06 SUPPLEMENTARY COMPENSATION. A recipient may apply to the commission for supplementary compensation if, for valid reason, it underestimated the costs of participation or if additional funds would substantially improve the recipient's ability to contribute to the proceeding.

PSC 3.07 PAYMENTS TO RECIPIENTS. (1) A recipient shall submit a claim for payment to the commission within 90 days of the recipient's completion of participation in the proceeding. The claim shall be accompanied by a supporting affidavit attesting to its correctness and shall include bills, receipts or itemized statements of expenses incurred for each item of expense exceeding \$15. To the extent practicable, the commission shall authorize payment within 30 days of receipt of the claim. The commission may make partial payments as a recipient's work progresses.

(2) Payment may be denied and is subject to refund if the recipient does not provide the representation of interests for which its application was approved.

PSC 3.08 AUDITS. The commission shall be granted access, for the purpose of audit and examination, to any books, documents, papers and records of a recipient that support a claim for compensation. A recipient shall retain all relevant records supporting a claim for three years after receipt of compensation. The auditor of an organization receiving \$30,000 or more of intervenor funding in one calendar year shall certify that the organization's internal control systems assure the funds are spent in compliance with the intent of the award and with this chapter.

PSC 3.09 DISCRETIONARY AUTHORITY. The awarding of compensation under this chapter is solely at the discretion of the commission. This chapter does not create any right or cause of action under state law.

SECTION 2. INITIAL APPLICABILITY. The treatment of ch. PSC 3 first applies to intervenor compensation applications the commission receives on the rule's effective date.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro), Stats.

(END)

G:\CO\EXAM\EXAMGEN\94082401.DLP

