

HB 828 INTRODUCED BY COHEN
PROVIDE MEANS OF COMPENSATION TO PUBLIC SERVICE
COMMISSION HEARING INTERVENOR

2/18 INTRODUCED
2/18 REFERRED TO BUSINESS & LABOR
2/19 FISCAL NOTE REQUESTED
2/20 HEARING
2/20 TABLED IN COMMITTEE
2/23 FISCAL NOTE RECEIVED

1 House BILL NO. 828
2 INTRODUCED BY Liban

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A MEANS FOR
5 COMPENSATION OF PERSONS WHO INTERVENE IN PUBLIC SERVICE
6 COMMISSION PROCEEDINGS."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Policy. It is the policy of this state to
10 encourage participation at all stages in all proceedings
11 before the commission. Financial ability should not restrict
12 the access of a consumer or a ratepayer organization to
13 reasonable participation in hearings and proceedings before
14 the commission. Public participation in the ratemaking
15 process ensures that all pertinent issues are addressed by
16 the commission in a fair and knowledgeable manner.
17 Therefore, the state provides a means for compensation of
18 persons interested in and directly affected by the subject
19 matter of any hearing or proceeding pending before the
20 commission.

21 Section 2. Rulemaking. The commission may adopt the
22 rules reasonably necessary for the implementation of [this
23 act].

24 Section 3. Definitions. In [this act], the following
25 definitions apply:

1 (1) "Compensation" means reasonable attorney fees,
2 expert witness fees, and other expenses including but not
3 limited to expenses incurred by an intervenor in
4 coordinating testimony in preparation for and participation
5 in a hearing before the commission.

6 (2) "Consumer" means any retail customer of a public
7 service company subject to the jurisdiction of the
8 commission.

9 (3) "Expert witness fee" means expenses incurred by an
10 intervenor for the use of an expert witness in a hearing
11 before the commission.

12 (4) "Hearing" means those activities referred to in
13 69-3-103, 69-3-303, and contested case rulemaking and other
14 proceedings initiated by the intervenor. Hearing refers to
15 the process involved in determining the reasonableness of
16 public service company rates, charges, rules, regulations,
17 and practices. A hearing must be conducted in accordance
18 with the Montana Administrative Procedure Act.

19 (5) "Other expenses" means reasonable expenses
20 incurred by an intervenor in preparation for and
21 participation in a hearing.

22 (6) "Reasonable attorney fee" means the fee rates
23 charged by attorneys performing similar work.

24 (7) "Substantial contribution" means presenting views,
25 testimony, or arguments that are considered by the



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1 commission in making its decision following a hearing. To
 2 make a substantial contribution does not mean that the
 3 intervenor's position necessarily prevails. The issue of
 4 whether an intervenor made a substantial contribution is
 5 determined by the commission.

6 Section 4. Eligibility as intervenor -- application
 7 procedure. (1) To be eligible for an award of compensation
 8 for participation in a utility hearing before the
 9 commission, an intervenor who is not a public utility,
 10 common carrier, railroad, or other industry regulated by the
 11 public service commission shall apply to the commission
 12 pursuant to the scheduling order in the proceeding.

13 (2) The application must be brief and must:

14 (a) state the consumer interest represented by the
 15 intervenor;

16 (b) distinguish the intervenor's interest from any
 17 represented by other intervenors;

18 (c) certify that the intervenor requested
 19 representation by the consumer counsel and the request was
 20 denied;

21 (d) state the relevance of the interest to the issues
 22 of the proceeding; and

23 (e) outline the general nature of the intervenor's
 24 expected participation.

25 (3) The application must be served on any:

1 (a) affected utility;

2 (b) other known party; and

3 (c) other known intervenor to the proceeding.

4 (4) An affected utility, a party, and another
 5 intervenor have the right to file an objection to any
 6 application for eligibility pursuant to commission rules.

7 (5) (a) The commission shall determine the
 8 intervenor's eligibility to receive an award under [this
 9 act] pursuant to commission rules.

10 (b) If the commission determines the intervenor is not
 11 eligible, the intervenor may not receive an award of
 12 compensation at the conclusion of the proceeding.

13 (c) If the commission determines the intervenor is
 14 eligible, the intervenor shall satisfy the other
 15 requirements of [this act] before he receives an award.

16 (6) The commission may condition its determination of
 17 eligibility on a requirement that intervenors with the same
 18 or similar interests share the same legal representative and
 19 common expert witnesses.

20 (7) The commission may in determining eligibility
 21 limit the amount of compensation that is awarded to an
 22 eligible intervenor.

23 (8) A utility is not entitled to compensation under
 24 [this act] from an intervenor.

25 Section 5. Award to intervenor. (1) At the time of

1 issuance of a final order in any utility hearing before it,
 2 the commission shall award to an intervenor who has
 3 satisfied the requirements of [this act] compensation for
 4 the reasonable costs incurred in participating in the
 5 hearing.

6 (2) The utility or utilities initiating the proceeding
 7 or whose rates are determined in the hearing shall pay the
 8 compensation.

9 (3) The commission makes the determination of whether
 10 an intervenor is entitled to compensation. An intervenor is
 11 entitled to receive compensation if the commission
 12 determines that consumer intervention substantially
 13 contributed to the formal decision rendered in the
 14 proceeding.

15 (4) In reviewing claims for compensation, the
 16 commission shall compare the claims with the expenses
 17 incurred by other parties to the proceeding for similar
 18 services. In no case may the award of compensation exceed
 19 the actual costs incurred by the intervenor for each
 20 service.

21 Section 6. Procedure for payment of compensation --
 22 objection -- payment by utility. (1) (a) Within 10 days of
 23 the date on which an appeal must be filed or from the date
 24 the commission order awarding compensation to an intervenor
 25 becomes final, the intervenor awarded compensation by the

1 commission shall file a memorandum of costs with the
 2 commission. The memorandum must detail the costs for
 3 attorney fees, expert witness fees, and other expenses for
 4 which compensation is claimed.

5 (b) At the same time, the intervenor shall serve a
 6 copy of the memorandum on any other party.

7 (c) Any party may file an objection to the memorandum
 8 if the party disputes the reasonableness of any cost claimed
 9 by the intervenor. The objection must be filed within 10
 10 days of the date the memorandum is filed with the
 11 commission.

12 (2) Within 30 days of its original order awarding
 13 compensation to the intervenor, the commission shall, after
 14 considering the memorandum filed by the intervenor and any
 15 objections to it, issue an order setting the amount of the
 16 compensation award. If necessary, the commission shall
 17 allocate the award among the affected utilities.

18 (3) (a) An intervenor who is not awarded compensation
 19 in the commission order may petition the commission for an
 20 award of compensation.

21 (b) The commission shall grant or deny the petition
 22 within 20 days of receipt. If the commission grants the
 23 petition, the intervenor shall follow the procedure set
 24 forth in subsection (1).

25 (4) (a) A utility charged with paying compensation to

1 an intervenor under [this act] shall pay the intervenor
2 within 30 days from the date the order is issued by the
3 commission under [section 5].

4 (b) If the utility does not make payment within that
5 period the intervenor may seek enforcement of the order in
6 district court. The utility shall pay to the intervenor a
7 reasonable attorney fee and the other costs incurred by the
8 intervenor in seeking enforcement in district court.

9 (5) The time periods contained in this section may be
10 changed by commission rule.

11 Section 7. Compensation by utility as regulatory
12 expense. (1) The money paid to an intervenor by a utility
13 under [this act] is a regulatory expense.

14 (2) If testimony is presented at a hearing at which
15 revenue requirements are not an issue, the commission may
16 order a rate increase, following proper notice, to cover the
17 compensation paid by a utility to an intervenor if the
18 commission determines that the size of the award warrants
19 immediate relief.

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