STATE CONSUMER ADVOCATES AND WESTERN ELECTRICITY REGIONALIZATION

A call to protect consumers and commit to the public interest

Prepared for California, Colorado, Montana, and Utah Consumer Advocates

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GRIDWORKS

TABLE OF CONTENTS

TABLE OF CONTENTS 2
EXECUTIVE SUMMARY 3
BACKGROUND 4
THE CHANGING ROLE OF STATE CONSUMER ADVOCATES 4
PROJECT OBJECTIVES 6
PROJECT TEAM 7
DEFINING "ORGANIZED WHOLESALE MARKETS" 7
POTENTIAL BENEFITS OF A REGIONAL ORGANIZATION 8
POTENTIAL HARMS TO CONSUMERS FROM A REGIONAL ORGANIZATION 9
A CALL TO ACTION 11
NEEDED OUTCOMES AND CONSUMER PROTECTIONS 12
DISCUSSION OF NEEDED OUTCOMES AND CONSUMER PROTECTIONS 13
CONCLUSION 16
RESOURCES 17

EXECUTIVE SUMMARY

The provision of electricity in the West is undergoing profound change. Electric system operators in California and Arkansas are moving to extend energy trading markets and pursuing regional transmission coordination. In this swiftly moving environment, the locus of decision-making is shifting from state commissions, with well-established legal practices and procedures, to Regional Organizations[1] that are developing new protocols as regionalization unfolds.

Consumer Advocates raise concerns with regionalization given the lack of demonstrable evidence of benefits for retail consumers and the significant potential for consumer harm. Consumer Advocates historically have played a dual role in state energy commissions, both as the counterbalance to monopoly overreach and as the representative of consumers. This state mandated role has not been extended to Regional Organizations, undermining the essential representation of those who ultimately pay for the Regional Organization's decisions. Consumer Advocates question several structural aspects of regionalization, including governance and decision-making processes, cost oversight, data transparency, and governing board independence. While Consumer Advocates do recognize the potential for cost savings and the more efficient use of resources from regionalization, Regional Organizations must concurrently protect consumers, commit to a public interest outcome, and deliver on purported benefits to end users.

To ensure these ends, Consumer Advocates call for the following outcomes and consumer protections to be incorporated into the formation of a Regional Organization in the West:

1. Expand the unique purpose and function of consumer advocacy to the regional level
2. No net increase in retail electricity rates/bills for residential/small commercial consumers as a result of utility participation in a Regional Organization. In simplest terms: "Do No Harm!"
3. Strong Market Oversight; Data Access and Transparency
4. Fair and Transparent Decision-Making
5. Adopt Established Good Governance Principles
6. States Retain Resource Planning and Retail Rate Authority

In the following pages, Consumer Advocates elaborate on these outcomes and consumer protections, calling for a dedicated revenue stream to fund a regional Consumer Office; transparency and price discipline for large, transmission expenditures; structural safeguards to ensure the independence and accountability of the market monitor; a fully transparent and documented decision-making process; the public interest and end-user expertise enshrined in governing board representation; and processes that support states' authority over resource planning and retail-rate making. With these safeguards and protections in place, Consumer Advocates can support the development of a Regional Organization and continue to carry out their statutory responsibilities to advocate for consumers.

[1] Consumer Advocates adopt "Regional Organization" as a general term for a future market construct, whether it be day ahead market services, transmission coordination, or full systems integration.

BACKGROUND

Electricity regionalization is underway in the Western Interconnection.[2] The Federal Energy Regulatory Commission (FERC) recently approved tariff changes that enable the launch of an Extended Day-Ahead Market (EDAM) for the California Independent System Operator (CAISO).[3] Southwest Power Pool (SPP) filed its *Markets+* day-ahead concept at FERC in late March 2024 and continues to push ahead with western expansion of its full regional transmission organization (RTO).[4] Further, discussions for an independently governed wholesale electricity market that could serve the entire West are gaining momentum in the West-Wide Governance Pathways Initiative.[5] And two states, Colorado and Nevada, have required transmission owners in their state to join an RTO by the end of the decade, if their state commissions declare that such an action is in the public interest.

In this swiftly moving environment, Consumer Advocates are concerned that the locus of decision-making is shifting away from state commissions to regional entities, without appropriate safeguards for the public interest and the interests of the consumers they represent. At the state level, Consumer Advocates have statutory standing to represent consumers, typically those residential and small business consumers who are unable to effectively advocate for their interests before regulatory bodies.[6] As consumer rates fund utility infrastructure and initiatives, representation and advocacy on behalf of consumer interests is vitally important to ensure just and reasonable outcomes - at the state and now at the regional level.

THE CHANGING ROLE OF STATE CONSUMER ADVOCATES

As the National Association of State Utility Consumer Advocates articulates, the role of the consumer advocate office has evolved across the decades.[7] The 1970s saw the merging of the energy crisis with efforts to increase competition, moves to deregulate vertically integrated utilities, and the skyrocketing cost of the construction and operation of nuclear generation. This convergence precariously placed consumers in a position of shouldering these costs without proper representation, at risk of becoming a casualty of the energy transition rather than a beneficiary. Market and regulatory forces were proving unwilling or unequipped to provide a

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[2] Technically the Western Interconnection is as defined here: https://www.wecc.org/epubs/StateOfTheInterconnection/Pages/The-Western-Interconnection.aspx. For purposes of this discussion, it is the transmission grid serving these 11 western states: AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY.

[3] California ISO News Release, FERC accepts ISO tariff changes for a Western day-ahead electricity market, Dec. 21, 2023.

[4] Southwest Power Pool, Markets+: A Proposal for Southwest Power Pool's Western Day-Ahead Market and Related Services, Nov. 30, 2022.

[5] Western Interstate Energy Board, West-Wide Governance Pathways Initiative, last accessed Feb. 12, 2024.

[6] The specific consumer segments represented by each state consumer advocate varies according to enabling statutes. Some consumer segments, generally larger commercial and industrial electricity users, have the financial wherewithal to fund their own advocacy. And between this myriad of consumers and those seeking returns on capital investments are other participants - public/nonprofit entities - with financial interests on behalf of their members or end users.

[7] National Association of State Utility Consumer Advocates, Who We Are, accessed March 2024.

meaningful counterbalance to profit seeking interests. Consumer advocate offices were created in the 1970s to provide this counterbalance. Not only did consumers have representation before regulators to argue for the aggregated interests of smaller consumers, but now the (imperfect) market had an oppositional force against profit-driven interests, yielding a potentially more balanced market outcome. Consumer advocates represented a force to pull monopoly back toward competition.

Consumer Advocates represent a non-rent seeking entity within regulated proceedings and the market structure more broadly. Consumer Advocates are structurally separate from regulators to give advocates independence and insulate them from political influence or reprisal from a powerful special interest.[8] They are routinely thought of as representatives of residential and other small customers. While this is true, it oversimplifies the role these advocates play in utility regulation. It reduces this position to that of any other stakeholder in the forum. The role of the Consumer Advocate is distinct and different from that of other stakeholders in the energy sector. Consumer Advocates are established by law, have a distinct legal construction, and act on that basis. They do not act to purely maximize monetary or policy benefit to their "clients" unless specifically instructed to do so by law; in this way they represent the "cost-takers," those that must pay the utility bills and fund electricity infrastructure investment. Many Consumer Advocates are statutorily directed to pursue and balance multiple mandates, giving valuable context to the overall pursuit of the public interest.

Thus, to fully understand consumer advocacy one must recognize their dual role, as both a structural actor counterbalancing market actor overreach, and as a representative of the consumers themselves. These roles have primarily taken place in state and federal regulatory forums, however their objectives and underlying premises now need to be expressly incorporated into regional markets.

As noted in the Background section, electricity regionalization is underway in the Western Interconnection. By changing the forum(s) within which electricity decisions will be made, the ability of advocates to effectively protect consumers is being undercut. Further, by moving consumer-impacting decisions out of forums where Consumer Advocates have standing (intervention authority, jurisprudence tools and appeal options), the potential to appropriately influence the decision-making and thereby protect consumers from decisions not in their interest is profoundly diminished.

The benefits of deregulation and market participation are far from resolved.[9] Evidence of real cost savings due to market formation is lacking. Indeed, many of the purported benefits of regionalization exist in secondary orbits to cost. While important, they are ancillary to the primary function of the market, which is the efficient sale and purchase of electricity at an optimized price to keep the lights on. Market constructs have not been achieving this function in either price or reliability.[10] The examples of traditional market construction, PJM, Southwest Power Pool and others, do not reassure western Consumer Advocates that regionalization will naturally deliver benefits to customers and the broader public interest.

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[8] Swanson Katz, Elin and Tim Schneider, Energy Law Journal, The Increasingly Complex Role of the Utility Consumer Advocate, May 4, 2020.
[9] Christie, Mark C, Energy Law Journal, It's Time to Reconsider Single-Clearing Price Mechanisms in U.S. Energy Markets, May 2023, pp. 11-12.
[10] See Wilkinson Barker and Knauer, LLP, At the Precipice: The Perils of Utility Restructuring, March 2021.

In the emerging Regional Organizations, there are generally two types of participants: those seeking to gain financially from the decisions and those seen as the source of revenue for these financial gains. The "end use" consumers (e.g. the retail customers whose bills will be the basis of regional cost recovery), as represented by Consumer Advocates, have understood and worked to improve this dynamic since the 1970s. In the West, the emergence of Regional Organizations where consumer-impacting decisions will be made represents just the latest challenge in this ongoing pursuit to protect consumers.

To date, regionalization has not meaningfully incorporated the consumer advocacy objectives and functions within their framework. Consumer Advocates are relegated to stakeholder status in each market construct. This position does not reflect the unique role vested in Consumer Advocates as a structural counterbalance and ignores the millions of customers they represent. Not recognizing this unique role of Consumer Advocates compromises public benefit outcomes promised in FERC Order 2000.[11]

This paper and the necessary consumer protections it puts forth, reflect this history and the persistent pursuit of fairness, as a minimum, and a comprehensive commitment to the public interest as the ultimate purpose for creating a regional organization. This spirit of consumer advocacy and the tone and content of this paper should not be interpreted as oppositional to the development of regional electricity organizations. Rather, it is a reinvigorated commitment to the shared principle of achieving the public interest as practiced in each Western state.

Fundamentally, the most effective way to concurrently protect consumers and achieve a public interest outcome is to anchor Regional Organizations in competitive market processes. This is easy to say and difficult to achieve. A truly competitive market will achieve the lowest price and best value, yet, it does not occur naturally. The request of the market (e.g., solicitation) needs to be fairly and transparently determined. Market participation needs to be free of barriers sufficient to prevent dominance and allow competitive forces to push against costs. And the overall market dynamics must be rigorously overseen, with the procedures and results freely accessible to all who are unencumbered by financial motivation, (e.g., all end-use consumers as well as governmental and nonprofit entities serving end-use consumers).

PROJECT OBJECTIVES

Given these changing dynamics, this project was conceived to assist state Consumer Advocates in defining their role in regionalization. The project concept was presented to the Western Consumer Advocates in May 2023.[12] The project began with the four broad questions below. The group met monthly over the course of ten months for a total of 18 meeting hours, including one in-person meeting in Denver, CO.

- What do Consumer Advocates see as the primary benefits and challenges of organized wholesale markets?

[11] Federal Energy Regulatory Commission, Order No. 2000, Docket No. RM99-2-000, Dec. 1999, pp. 2-3.
[12] The Consumer Advocates from states in the Western interconnect meet monthly to discuss developments and share ideas. This project grew out of conversations from those regular calls.

- What are the likely "intervention points" concerning utility participation in formal markets, where Consumer Advocates can effectively engage?[13]
- What threshold outcomes do Consumer Advocates need to conclude that a utility's participation in a formal market will be net beneficial to consumers?
- What analysis needs to be provided by utilities and/or required by Commissions to evaluate whether the threshold outcomes are being met?

However, during the course of this project, stakeholders initiated conversations to explore a new approach to a west-wide Regional Organization.[14] As these conversations accelerated, Consumer Advocates recognized the urgency of inserting their perspective into the unfolding dialogue, while speaking into all regional forums. Therefore, this project evolved into developing a platform for Consumer Advocates to articulate the structural needs, outcomes and consumer protections necessary to ensure consumer interests are preserved in the formation of a Regional Organization.

PROJECT TEAM

The core project team included representatives from four Western state Consumer Advocate organizations. Representatives from Gridworks provided facilitation, project management, and report writing services.

Consumer Advocates

- Matt Baker, California Public Advocates Office[15]
- Michele Beck, Utah Office of Consumer Services
- Joseph Pereira, Colorado Office of the Utility Consumer Advocate
- Jaime Stamatson, Montana Consumer Counsel

Gridworks

- Jeff Ackermann, Senior Fellow
- Cathy Boies, Director
- Mike Florio, Senior Fellow
- Claire Halbrook, Director
- Sarina Soor, Senior Project Manager

DEFINING "ORGANIZED WHOLESALE MARKETS"

Given the myriad of regional forums and objectives in the West pursuing electric system regionalization, simply defining "organized wholesale markets" has been a challenge. A range of services, from energy trading in day ahead markets to full regional transmission coordination and planning via an RTO, are all under discussion in different forums. By state statute, Colorado and Nevada are obligated to join an "organized wholesale market" by the end of the decade provided

[13] See Western Freedom's Western Electricity Emerging Markets: State-Level Regulatory Analysis, Mar. 27, 2023.
[14] See the West-Wide Governance Pathways Initiative.
[15] Matt Baker represented the Public Advocates Office in this effort until March 5, 2024, when he was sworn in as commissioner at the California Public Utilities Commission. Julie Halligan represented The Public Advocates Office for the conclusion of the project.

certain conditions are met and the state energy commissions find membership to be in the public interest.[16]

For purposes of this work, Consumer Advocates adopt "Regional Organization" as a general term for a future market construct, whether it be day ahead market services, transmission coordination, or full systems integration. Consumer Advocates believe the same consumer interest principles and protections apply in all of these contexts.

POTENTIAL BENEFITS OF A REGIONAL ORGANIZATION

Proponents of Regional Organizations argue that consumers stand to benefit from western market expansion.[17] In theory, expanded electricity markets can offer more affordable and reliable energy, in addition to paving the way for greater amounts of decarbonized electric generation. These benefits can accrue in several ways:

- Larger pool of generation and consumers
    - Optimized unit commitment and dispatch across a larger number of generators and consumers
        - Allows lowest cost generation to serve load, subject to transmission constraints
        - May provide a greater ability to optimize the system and match excess renewable generation to load
        - Increased utilization of existing assets can reduce planning reserve margins and avoid the need to construct new assets
- Larger geographic footprint
    - Better able to manage fluctuations in output from variable energy resources
    - Weather diversity allows unused capacity in one area to meet weather-induced load spikes in another area. Can allow for reduced reserve margins and potential reliability benefits
    - Access to more transmission lines and greater use of those lines
- Coordinated transmission planning
    - In a full RTO, region-wide determination of transmission needs could more effectively factor in multiple variables - dynamic changes in available generation, load growth/shifting, etc., than individual utility planning, yielding investment only in the most necessary interstate transmission, potentially avoiding unnecessary and duplicative consumer costs while at the same time advancing state policies

Experience with the Western Energy Imbalance Market (WEIM), operated by CAISO and covering about 80% of the electric demand in the West, provides evidence in support of the economic benefits of a larger energy market footprint. CAISO recently reported that: "During the fourth quarter of 2023, the WEIM's 22 participants attained $391.82 million in cost-saving benefits,

[16] Nevada Revised Statutes § 704.79886 and Colorado Revised Statute § 40-5-108(2).
[17] See Energy Strategies' The State-Led Market Study, June 2021 and Colorado Public Utilities Commission's Investigation of Wholesale Market Alternatives for Colorado, Dec. 2021.

pushing the total savings across California and the West to $5.05 billion since the market was launched in late 2014."[18]

However, these are gross benefits that do not take into account any offsetting costs incurred by participating entities in order to participate in the market, and also do not account for savings that could have been achieved through bilateral transactions in the absence of the WEIM. Nonetheless, the $5 billion figure, even if overstated, is still impressive. CAISO also reports that: "Since 2014, the real-time electricity market has reduced greenhouse gas emissions by more than 925,568 metric tons, or the equivalent of taking more than 194,597 passenger cars off the road for one year."

Also, the Southwest Power Pool (SPP) commissioned a study that identified $49 million of annual benefits if its energy imbalance service members were to expand their participation and fully integrate their systems into the SPP RTO.[19]

It is widely recognized that the economies of scale created by a larger Regional Organization offer economic savings. However, the potential movement from just an energy commodity market toward a full RTO raises additional and more complex questions regarding offsetting costs and loss of state control.

POTENTIAL HARMS TO CONSUMERS FROM A REGIONAL ORGANIZATION

While the potential for economic benefits from a Regional Organization may be widely understood, Consumer Advocates argue that other factors must also be considered to ensure benefits accrue to consumers. In general, Consumer Advocates are concerned there is insufficient oversight and accountability, including in governance structure and decision-making process, cost oversight, data transparency, and governing board independence, among other issues discussed in this report. If not thoughtfully structured and effectively managed, a Regional Organization could develop opaque and inaccessible decision-making structures that could harm consumers in the following ways:

- No formal, impartial decision-making forum (as occurs at a state commission level)
- No recognized structural role for Consumer Advocates (as a recognized party by right or equivalent)[20]
- Lack of transparency into the details behind proposed tariffs and other proposals with retail rate implications

[18] CAISO News Release, WEIM Benefits Report Shows Another Historic Milestone, Jan. 31, 2024. CAISO also asserts that: "regional energy transfers helped keep the lights on during an extreme cold spell in parts of the West" during mid-January 2024.
[19] The Brattle Group, Western Energy Imbalance Service and SPP Western RTO Participation Benefits, Dec. 2, 2020.
[20] In state proceedings, Consumer Advocates have enabling statutes that typically grant them elevated party status and access to confidential information denied to market participants/competitors. CA Public Utilities Code § 309.5, Colorado Revised Statutes § 40-6.5-104, Montana Code § 69-2-202. Utah Code § 54-10a-301.

- Absence of means for accessing data and information and modeling assumptions (akin to discovery in a litigated regulatory proceeding)
- No fair and impartial forum for appeal/reconsideration of decisions
- No funding or staff support for Consumer Advocates to represent consumer interests
- Complicated rules and regulations that may not be captured in a business manual or bylaws

Other potential harms include:

- Emissions tracking/accounting that may be inadequate to implement state policies or, conversely, may shift costs to consumers in states without emissions reduction policies
- Adverse impacts to resource adequacy requirements and costs
- In full RTOs, long queues for generator interconnection requests causing project delays and potentially increasing the cost of new generation
- In full RTOs, lack of transmission cost oversight (costs coming in higher than modeled; lack of after-the-fact review of costs)
- In RTOs with centralized resource planning, loss of state control over asset utilization

There are a number of ways in which a Regional Organization could result in *increased costs* to consumers. Some of these include:

- Increased energy costs due to market power and/or market manipulation, as occurred in California's Energy Crisis of 2000-01. In moving from state cost-based rate regulation to a wholesale market, consumers face the risk that competition will not be sufficient to discipline market prices in the manner intended. A functionally competitive market doesn't just occur naturally—it requires structure and ongoing, substantive oversight.

- Increased capacity costs due to an excessive planning reserve margin or a flawed centralized capacity market. The necessary planning reserve margin should theoretically decrease as a broader market is developed that spreads reliability risks across a wider footprint, but such an outcome is not guaranteed. If an RTO develops in the West with a standardized planning reserve margin, it will be essential to avoid the mistakes of the centralized capacity markets in the eastern RTOs. These flawed centralized capacity markets have often imposed high costs on consumers. Authorizing utilities to purchase more reserve capacity than truly necessary directly adds costs to retail customers without associated benefits.

- Excessive administrative costs from setting up and/or operating the market. Another potential concern with establishing a Regional Organization is that it will require creation of another entity that will incur administrative costs, technology outlays and other expenses that could add to consumers' bills, both at startup and in ongoing operations. In the case of California's imbalance market, these costs appear to have been small in comparison to the savings generated. However, as the responsibilities of the Regional Organization increase, its administrative fees will need to be closely monitored to avoid excessive costs and duplication.

- Excessive transmission costs due to overbuilding or lack of cost oversight on transmission investments. In existing RTOs across the country, there have been complaints about

transmission costs escalating rapidly. Issues include lack of competition for new transmission development, lack of cost control on approved projects, and the potential for some categories of smaller transmission investments to avoid any regulatory review whatsoever.

- Cost shifts across jurisdictions. State Consumer Advocates, especially those in currently low-cost states, are concerned that under a Regional Organization there could be cost shifts that leave their state's ratepayers worse off, as well as undercut the state's competitive advantage in economic development. RO designers, directors and operators should all be vigilant in preventing any such cross-subsidies.

- Reduced benefits from a broad market footprint if two day-ahead markets are formed in the West. Separate markets result in reduced economies of scale and decreased diversity benefits, which could lead to an erosion of potential savings.

A CALL TO ACTION

Consumer Advocates have long raised these concerns with regionalization given the lack of concrete evidence to support the purported benefits and the significant potential for consumer harm. Consumer Advocates' concerns are not in opposition to the idea of regionalization or expanded markets; rather, these concerns stem from our observed experience that theoretical benefits have often not been realized in areas of the country with greater levels of regionalization. Advocates raise issues of access, representation, and governance structure in order to point out that proper representation is essential in regional operations to ensure protections for those who are ultimately financially supporting the Regional Organization. Further, the promise of markets to reduce retail customer bills has largely gone unfulfilled. The inaccessibility of market governance, supply-side bias, wholesale-retail disconnect,[21] self-scheduling, and the ceding of policy, resource, and transmission control to the Regional Organization has created an environment where consumer interests have been undermined.

Consumer Advocates call for outcomes and consumer protections to be incorporated into the formation of a Regional Organization. As recently as 2021, Consumer Advocates and pro-market groups called for deep analysis of the costs and benefits of organized power markets.[22] These calls have been focused on the regional concept being unable to manifest real customer benefits. Consumer Advocates are skeptical of the materialization of robust benefits of regional participation without measurable, verifiable, and examinable data and methodologies. As such, Consumer Advocates call for a cautionary approach to regionalization. As constructed, current Regional Organizations fall far short of aspirations and therefore demand increased scrutiny and additional protections to better fulfill just and reasonable outcomes.

Consumer Advocates now call for the following outcomes and consumer protections to be incorporated into the formation of a Regional Organization.

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[21] U.S. Dept. of Energy, Staff Report to the Secretary on Electricity Markets and Reliability, Aug. 2017, pp. 120-125.
[22] Electricity Consumers Resource Council, Letter to Chair Manchin and Pallone and Ranking Members Barrasso and Rodgers, Jul. 8, 2021.

NEEDED OUTCOMES AND CONSUMER PROTECTIONS

1. **Expand the unique purpose and function of consumer advocacy to the regional level**
   - ➔ State Consumer Advocates' status has been elevated in state laws for decades[23]
   - ➔ This heightened status must be extended to the regional level, recognizing Consumer Advocates' roles both structurally and as representatives of customers
   - ➔ A Regional Organization should provide a dedicated funding stream to create a regional Consumer Office
   - ➔ This regional Consumer Office should support state Consumer Advocates' representation in the Regional Organization through communication, coordination, and data analysis, with the mission to facilitate consumer and public interest advocacy at the regional level

2. **No net increase in retail electricity rates/bills for residential/small commercial consumers as a result of utility participation in a Regional Organization. In simplest terms: "Do No Harm!"**
   - ➔ Consumer rates and bills should not increase as a result of regional participation
   - ➔ Governance and market rules should be focused on overall efficiency and lowest costs, taking care to ensure that special interests do not dictate outcomes
   - ➔ Competitive bidding should be required for large new transmission projects
   - ➔ All transmission-related costs should be subject to after-the-fact regulatory review in the proper state or federal forum

3. **Strong Market Oversight; Data Access and Transparency**
   - ➔ The market monitor should be empowered with adequate tools to act as a structural counterbalance
   - ➔ The market monitor is a natural connection point for Consumer Advocates and should, as a part of its required duties, be directed to communicate with and provide analyses to state Consumer Advocates
   - ➔ State Consumer Advocates, as non-market participants, should have unrestricted access to all the data and reports of the market monitor
   - ➔ Consumer Advocates must have guaranteed access to transmission expansion modeling and other key analyses

4. **Fair and Transparent Decision-Making**
   - ➔ The Regional Organization's decision-making process should be articulated in full detail, step by step
   - ➔ The process should prioritize solutions that promote the public interest and consumer benefits
   - ➔ Every stage of the process should be publicly noticed and provide opportunities for public participation
   - ➔ Stakeholder processes should be managed by a neutral party
   - ➔ All votes should be recorded and publicly available for review

[23] See footnote 20.

- ➔ The Regional Organization should maintain a public website that includes all meeting notices, agendas, decisional documents, and other relevant materials, including the rationale for decisions made
- ➔ Any membership fees should be waived for state-sanctioned Consumer Advocates

5. **Adopt Established Good Governance Principles**
   - ➔ The governing board of the Regional Organization should recognize the protection of the public interest as its primary duty
   - ➔ Energy end user expertise should be delineated as one of the criteria for governing board selection
   - ➔ Consumer Advocates should have a meaningful role in the governing board selection process
   - ➔ Governing board members must have financial and political independence

6. **States Retain Resource Planning and Retail Rate Authority**
   - ➔ State integrated resource planning (IRP) processes should continue to function largely as they do today, maintaining state authority over resource adequacy
   - ➔ State regulators should retain cost oversight of retail rates and be provided information from the Regional Organization sufficient to ensure cost containment
   - ➔ The Regional Organization should establish clear channels of communication between its decisions and market outcomes and state regulatory processes

DISCUSSION OF NEEDED OUTCOMES AND CONSUMER PROTECTIONS

1. **Expand the unique purpose and function of consumer advocacy to the regional level**

State Consumer Advocate offices are typically established in state law to structurally represent the public interest, typically the interests of small consumers (residential and small business) who otherwise are unable to effectively advocate for their interests in state regulatory proceedings. As the focus of decision-making on a number of critical issues potentially shifts from state commissions to a Regional Organization, it is critical that the voices of millions of small consumers are not silenced in the process. Experience from other regional organizations around the country indicates that this consumer perspective is easily lost in the context of the shift to regional governance.[24] Even when the door is theoretically open to small consumer participation, the reality has been that in practice the end-use consumer voice is often absent or considered only as an after-thought. (Also, the Regional Organization decision-making process tends to operate in a way that disadvantages adequate consumer protections.)

Accordingly, the most fundamental need for small consumers in a Regional Organization is that the role of state-sanctioned Consumer Advocates continues to be formally recognized and prioritized—not just as "another stakeholder" but as the official voice of the small consumers who ultimately pay the bills and an essential part of maintaining state policy with respect to utility

[24] See Commissioner Mark Christie's dissent in Order Denying Complaints re Public Service Commission of West Virginia et al v. PJM Interconnection, LLC. Docket No. EL23-50-000, Mar. 1, 2024.

regulation. In order for this to occur, a dedicated funding stream must be established at the outset of the Regional Organization to support the coordinated participation of state Consumer Advocates in the processes of the Regional Organization. This funding stream should be a separate line item in the Regional Organization budget or a separate surcharge. The funding stream should be used to create a standalone Consumer Office that acts as a liaison to state Consumer Advocates and coordinates their participation in the Regional Organization's decision-making processes.

An example of such an entity is the Consumer Advocates of the PJM States, Inc. (CAPS). FERC approved the ongoing funding of CAPS via the PJM budget in 154 FERC ¶ 61,147 (2016). The organization attends PJM stakeholder meetings and regularly informs its member state Consumer Advocates of the RTO's activities. While the internal organization of a CAPS-equivalent for the West should be determined by the Consumer Advocates themselves, the availability of dedicated funding and an established voice is imperative, as the existing state Consumer Advocate offices in the West, individually and collectively, are not resourced to participate in new regional forums.

2. **No net increase in retail electricity rates/bills for residential/small commercial consumers as a result of utility participation in a Regional Organization. In simplest terms: "Do No Harm!"**

Given that a regional organization is being considered precisely because of the anticipated benefits resulting from a larger market footprint (economies of scale; sharing/reallocating/balancing surpluses, etc.) it would seem axiomatic that consumer rates and bills should not increase as a result of regional participation, but that outcome cannot be guaranteed *a priori*. Often studies that claim overall gross benefits to market expansion have not examined whether benefits are reasonably spread across all sub-regions or individual states or to what extent offsetting costs and potential new risks erode those benefits. Consumer Advocates in each individual state seek to ensure that the consumers in their state benefit or at least are not harmed by any potential participation in a Regional Organization.

The details of governance and stakeholder participation in Regional Organization processes will have a direct impact on how well market benefits accrue to actual end user rates and electric bills. A Regional Organization must be designed to protect against policies being developed by specific market participant sectors in a way that does not promote the public interest and diverts benefits from end users.

Other elements of program design must also be carefully overseen. For example, the implementation of specific state policies must be approached in a manner that ensures costs of those programs are not shifted to states that do not have similar programs. This is particularly the case for state clean energy policies, which vary widely from state to state.

Another key element of ensuring no net increase to retail bills is proper oversight of transmission costs. For example, competitive bidding should be required for large new transmission projects, along with accountability for cost overruns in excess of the costs that were estimated when the project was approved. All transmission-related costs should be subject to after-the-fact regulatory

review, including smaller "asset management" projects that often fall under the radar in a regional market.[25] An Independent Transmission Monitor should be considered to perform these roles.

3. Strong Market Oversight; Data Access and Transparency

While FERC typically requires an independent market monitor for regional markets, the structure of that function and its reporting relationships are important. The market monitor must be adequately funded to include, as a part of its regular duties, on-going communication with state Consumer Advocates. This includes reviewing data, discussing market trends, and identifying possible market power/manipulation with state Consumer Advocates. The market monitor should provide reports and analyses to state Consumer Advocates, without restrictions (subject to confidentiality requirements where appropriate). With the market determining energy prices rather than regulators, state Consumer Advocates should have a direct line of communication with the market monitor so that they can fulfill their oversight mission on behalf of small consumers.

4. Fair and Transparent Decision-Making

A primary concern with existing RTOs is that decision-making processes are often opaque, with a plethora of committees and task forces, and subject to undue influence by financially interested market participants.[26] A Regional Organization's governing documents should describe its decision-making process in full detail, step-by-step, and provide public notice and the opportunity for public participation at every stage of the decision-making process.

Further, stakeholder processes should be managed by a neutral party. Closed meetings should only be allowed in limited situations, similar to closed meeting provisions that apply to government entities. All votes should be recorded and publicly available for review. And the Regional Organization's website should be accessible to the public and include all meeting notices, agendas, decisional documents, and other relevant materials. Virtual participation in meetings should be facilitated whenever feasible. Market rules should ensure that no sectors have disproportionate access to the governing board or Regional Organization staff or other intermediate decision makers of the organization.

If "membership" in the RO is required in order to fully participate in decision-making, any membership fees should be waived for state-sanctioned Consumer Advocate offices in order to facilitate their full participation.

Final decisions of the Regional Organization should be documented with a "paper trail" that includes the rationale and criteria for the decision, with an explanation of how conflicting viewpoints were considered and accommodated in the final outcome. Dissenting voices should be allowed to present their concerns to the governing board prior to final action.

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[25] *See generally* Maine Office of Public Advocate, Formal Challenge of the Maine Office of Public Advocate to Violations of ISO New England's Information Exchange Protocols by the Identified New England Transmission Owners, Docket No. ER20-2054-000, Jan. 31, 2024.
[26] *See generally* Peskoe, Ari. Replacing the Utility Transmission Syndicate's Control, Nov. 2023 and Welton, Shelley, Rethinking Grid Governance for the Climate Change Era, 2021.

5. Adopt Established Good Governance Principles

FERC rules require that the members of the governing board of a Regional Organization be *financially* independent from all market participants. Consumer Advocates believe that further steps toward true independence are necessary. The governing documents for the entity should establish that the primary duty of the governing board members is to the public interest and the prioritization of consumer benefits. Energy end user expertise should be recognized as one of the explicit criteria for governing body member selection, and Consumer Advocates should have a meaningful role in that selection process.

6. States Retain Resource Planning and Retail Rate Authority

While it might be considered a "given", this principle merits articulation. With most utilities in the West remaining vertically integrated, state integrated resource planning (IRP) processes should continue to function largely as they do today. These should continue to be the primary venues for development and implementation of varying state policies, including resource portfolios, greenhouse gas requirements, etc., even if the Regional Organization has a limited role in facilitating those policies. While a Regional Organization should not threaten either this state authority, the principle must be guarded carefully in the context of regional developments.

Similarly, state regulators should retain oversight of retail rates and continue in their cost containment role. In order to do this, state regulators must be provided information sufficient to ensure just and reasonable rates. This requires clearly established channels of information between Regional Organization decisions, market outcomes, and state regulatory processes, such as fuel and purchased power adjustments. There must be an effective "hand-off," presumably through utility filings at commissions, to ensure that regional savings flow into retail tariffed rates.

CONCLUSION

If the West can successfully regionalize, the provision of electricity may undergo profound change in the Western Interconnect in the coming decade. While there is the potential for significant savings from this regionalization through economies of scale and the more efficient use of electric resources, there is also the potential for harm to consumers from opaque governance, market manipulation, or excessive costs if regionalization is not properly implemented and managed.

To ensure these potential savings materialize for consumers and to protect against market harms, Consumer Advocates must be properly represented and resourced in Regional Organizations. This includes: a dedicated revenue stream to fund a Consumer Office in the Regional Organization; transparency and price discipline for large, transmission expenditures; structural safeguards to ensure the independence and accountability of the market monitor; a fully transparent and documented decision-making process; the public interest and end-user expertise enshrined in governing board representation; and processes that support states' authority over resource planning and retail-rate making. With these safeguards and protections in place, Consumer Advocates can support the development of a Regional Organization and continue to carry out their statutory responsibilities to advocate for consumers.

RESOURCES

Christie, Mark. It's Time to Reconsider Single-Clearing Price Mechanisms in U.S. Energy Markets, Feb. 2023.

Consumer Advocates of the PJM States. PJM Transmission Costs and Transparency Update, Sept. 2023.

Electricity Customer Alliance. Customer Principles and Best Practice Recommendations on RTO Governance, Sept. 2021.

Federal Energy Regulatory Commission, Order No. 719, issued Oct. 2008.

Harvard Electricity Law Initiative, Transmission Planning and Cost Management, Mar. 2023.

Natural Resources Defense Council. Making Sense of Potential Western ISO Governance Structures: The Role of the States, Jun. 2016.

Parent, Christopher. Governance Structure and Practices in the FERC-Jurisdictional ISOs/RTOs, Feb. 2021.

Peskoe, Ari. Replacing the Utility Transmission Syndicate's Control, Nov. 2023.

Reynolds, Alice at al. Letter to CREPC-WIEB Regulators Call for Westwide Market Solution, Jul. 2023.

Simeone, Christina. PJM Governance - Can Reforms Improve Outcomes, May 2017.

Welton, Shelley, Rethinking Grid Governance for the Climate Change Era, 2021.

Western Freedom, Western Electricity Emerging Markets: State-Level Regulatory Analysis, Mar. 2023.