

**West-Wide Governance Pathways Initiative
Public Interest Working Group**

**Comments of the Colorado Office of the Utility Consumer Advocate
August 29, 2024**

The Colorado Office of the Utility Consumer Advocate (“COUCA”) respectfully submits these comments in support of the Public Interest Working Group proposal for supporting the public interest within the West-Wide Governance Pathway Initiative (“Pathways” or “RO”). COUCA asks the Launch Committee to adopt the proposals of the Working Group and provide further elaboration and additional recommendations to the concepts presented related to Consumer Advocate representation and the role of the Market Monitor. Pathways has proactively engaged with Consumer Advocates, including COUCA, to support our representation and enable Consumer Advocates to meet our public interest obligation within the market. The proposal has taken meaningful steps to effectively engage Consumer Advocates. Adoption of these additions and modifications further engages Consumer Advocates and fulfills the necessary requirements to ensure the public interest and interests of small electric consumers are met. COUCA appreciates the Launch Committees engagement with these concepts and would be happy to further explain these concepts in more detail.

Role of Consumer Advocates

Consumer Advocates act in two distinct roles.¹ They act as advocates on behalf of residential and small commercial customers in regulatory proceedings and more broadly as agents of the public interest. In a developing market construct, whether local or regional, it is important that Consumer Advocates can express these dual roles in an effective manner. State Consumer Advocates are created by state statute and our responsibilities are defined as such. As regional markets develop in the West it is imperative that Consumer Advocates can exercise our mandates and agency in this context. Developing structures within the RO can support Consumer Advocates in fulfilling these roles and better positions the RO, through adding Consumer Advocates’ unique perspectives, in meeting its public interest goals.

¹ State Consumer Advocates and Western Electricity Regionalization. Gridworks. March 2024. p.4-6.
https://gridworks.org/wp-content/uploads/2024/04/State-Consumer-Advocates-And-Western-Electricity-Regionalization_Final-Report.pdf

Goals of Consumer Advocates in Market Development

In order to meet the statutory obligations Consumer Advocates are tasked with, COUCA has identified the following three goals Consumer Advocates should meet within the Market Construct:

- Representation;
- Active Participation; and
- Efficient Market Operation and Oversight

Consumer Advocates are sensitive to market outcomes as they translate to either costs or benefits to consumers. As such, it is appropriate for consumers to have representation in various ways within the RO. The proposals before the Launch Committee in various Working Groups, such as sector representation and a seat on the Nominating Committee, meaningfully address this goal. Consumer Advocates have a “seat at the table” to represent these interests. Establishment of a Consumer Advocate Organization (“CAO”) provides Advocates the means to fully occupy that seat.

As the RO supports the goal of representation, it is the obligation of Consumer Advocates to then meaningfully fill this seat and actively participate in the market as a stakeholder as a consumer representative and a representative of the public interest. CAO establishment provides the necessary organizational support to ensure Consumer Advocates actively and fully participate to represent small customers and to support the public interest mandate of the RO more broadly.

The third goal of Consumer Advocates is to ensure efficient market operation. Consumer Advocates have raised issues related to the translation of market benefits to retail customers.² Ensuring market operation is free from manipulation, based on transparency, and working efficiently is key to gaining Consumer Advocate support of western market development. Creation of a truly independent market monitor with connections and support of Consumer Advocates provides backing to an efficient market and allows Consumer Advocates to fulfill the second element of our established role, promoting and supporting the public interest.

² State Consumer Advocates and Western Electricity Regionalization. Gridworks. March 2024. p. 14.
https://gridworks.org/wp-content/uploads/2024/04/State-Consumer-Advocates-And-Western-Electricity-Regionalization_Final-Report.pdf

Consumer Advocate Organization

The Working Group has proposed the inclusion of a CAO. COUCA supports this inclusion. Inclusion of the CAO supports the goals of representation, transparency, and active participation in the market as discussed above.

The Consumer Advocates of the PJM States (“CAPS”) was formed to address the lack of meaningful representation that simple membership in PJM represented and the challenges that lack of funding presented for individual Advocates to actively be involved in the market process.³ This lack of proper representation imperiled consumer interests in RTOs and left them with one solution for recourse: litigation at the Federal Energy Regulatory Commission (“FERC”).⁴ This situation is sub-optimal in that it further stresses scarce Advocate resources, reduces capacity to act in a timely manner, and also further strains efforts to work collaboratively within the RTO structure. Pathway’s inclusion of a CAO pre-emptively avoids this less than desired outcome. CAPS formed as a voluntary membership organization made up of single vote, state-approved utility Consumer Advocates within the PJM region. CAPS has the following characteristics:⁵

- Each member appoints one designated Board member;
- It elects officers;
- Establishes a budget; and
- Holds regular meetings.

CAPS was formed to assist Consumer Advocates in participation at PJM. COUCA observes CAPS as providing three necessary functions to assist in representation and full market participation: convening, information and market liaison, and administrative support. These are all functions that COUCA believes should be included in the Working Group Proposal. CAPS performs these functions in these ways:⁶

³ A Brief History & Overview of the Consumer Advocates of the PJM States. The Consumer Advocates of PJM States. 2020. p.4. https://0201.nccdn.net/1_2/000/000/09c/f55/CAPS-History-and-Overview-Report-v1-052919--002-.pdf

⁴ Model Corporate Governance for Regional Transmission Organizations and Independent System Operators. National Association of State Utility Consumer Advocates Report. January 2009. <https://nasuca.org/wp-content/uploads/2009/01/Model-RTO-.pdf>

⁵ A Brief History & Overview of the Consumer Advocates of the PJM States. The Consumer Advocates of PJM States. 2020. p.6. https://0201.nccdn.net/1_2/000/000/09c/f55/CAPS-History-and-Overview-Report-v1-052919--002-.pdf

⁶ A Brief History & Overview of the Consumer Advocates of the PJM States. The Consumer Advocates of PJM States. 2020. p.. https://0201.nccdn.net/1_2/000/000/09c/f55/CAPS-History-and-Overview-Report-v1-052919--002-.pdf

- Internal briefings;
- Collaboration, cooperation, and negotiation with other stakeholders;
- Outreach, Information, and education to members;
- Education for members and other stakeholders; and
- Training

COUCA supports recommendations from the Working Group to replicate these activities and provide tariff-based funding to do so. Standing up this organization supports the goals of Consumer Advocates related to both representation and full market participation. This both enables the customer voice in the market and supports more robust stakeholder processes within the market.

Market Monitor Design

COUCA asks the Launch Committee to evolve the role of the CAISO Department of Market Monitoring (“DMM”) beyond its current state. COUCA asks for this entity to be further empowered and made more independent from the CAISO. COUCA notes two challenges posed by the current configuration of the DMM:

- California governance
- Capture

The CAISO is a creation of the California State Legislature. As the current DMM and related Market Surveillance Committee sit under the auspices of the CAISO, they are then tied to political entities. The CAISO Board is appointed by the Governor of California and confirmed by the State Senate. The current MMU is overseen by the Department of Market Monitoring Oversight Committee which is elected by the Board of Governors and seated with its members or those with delegated authority from the Board. This configuration creates governance challenges similar to the concerns many state entities have equated to the CAISO market itself. As Pathways grows toward a more independent governance structure, so too should its

monitoring entity.⁷ COUCA asks the Launch Committee to create a new independent entity to monitor market activities.

Capture also represents a challenge for Consumer Advocates in the activities of the Market Monitor (“MM”). Similar to the concerns around the CAISO governance structure, COUCA raises concerns to the Launch Committee to ensure structures are in place to avoid capture of entities tasked with monitoring operations and governance within the RO. Capture occurs when structures move from their primary interest being the public interest and toward industry or market interest. The MM must be beyond reproach. Appearances of political influence, harvesting staff from industry, and proximity to market participants all undermine faith in market oversight. This is especially true in a market that could be geographically large and diverse in energy policy goals, resource mixes, and electricity costs. Consumer Advocates across the country have raised concerns that MM entities within their own RTO/ISO structures sit adjacent to and integrated with the operator and market participants. The Step 2 proposal should look to build on current RTO/ISO practices and the structure of the CAISO MMU to evolve to align with the goals of this market construct more broadly.

Proposed Modifications to the Market Monitor

COUCA proposes the following modifications to the currently proposed approach:

- Stand up an independent MM (“IMM”) entity. The CEO (or Market Monitor) will convene staff, direct activities, and report to the RO and FERC as necessary.
- Establish a public interest mission and charter for the entity.
- Provide tariff-based funding for the IMM.
- Empower the IMM by providing the tools necessary to monitor the western market and broader market performance across the interconnects.

⁷ The COUCA does not wish to imply that the MMU is in any way shape or form acting improperly or not meeting the mission of its charter. Instead, the COUCA proposes evolution and empowerment of the entity toward additional independence through lessons learned in the CAISO and other RTO/ISOs.

- Empower the IMM with the authority to mitigate, sanction, and penalize to ensure efficient market functions.
- Connect the IMM with governance pathways to identify and move market rule changes to improve market function.
- Encourage the IMM to pursue transparency in the market and within its own operations.
- Stand up a Board of Directors for the IMM consisting of State Consumer Advocates, with utilities or other entities participating in the market, to conduct the following functions: hiring and performance review of the CEO/ Market Monitor, alerting the IMM to market concerns and providing guidance for action, providing guidance on prioritization and decision-making processes, and connecting state Consumer Advocates with market data to ensure costs and benefits of the market are translating to retail customers.

COUCA plans to present a developed proposal on the IMM structure, based on these modifications, during the open comment period for the Step 2 Draft Revised Proposal.