



**Public Advocates Office Comments on the August 15, 2024 West-Wide Governance Pathway
Initiative Public Interest Workshop**

August 29, 2024

The Public Advocates Office (Cal Advocates) is the state-appointed independent ratepayer advocate at the California Public Utilities Commission (CPUC). Our goal is to ensure that all Californians have affordable, safe, and reliable utility services while advancing the state's environmental goals. Our advocacy efforts to protect California customers include energy, water, and communications regulatory matters.

Cal Advocates submits the following responses to the questions posed in the Stakeholder Comment Template under the CAISO Issues and Tariff Workshop.¹ In summary, Cal Advocates recommends:

- the working group adopt *ex parte* rules for communications with the Regional Organization (RO) board, incorporate a mechanism to appeal RO board decisions, and require the RO board to respond to data requests from state commissions;
- the States Committee require a majority of load and a majority of states approve any proposal that goes to the RO board for a vote;
- the States Committee receive tariffed funding;
- reserve seats for the States Committee and Consumer Advocates on the committee that oversees the RO's market monitor;
- the federal Power Marketing Administrations (PMA) not be allocated any role on the States Committee;
- no voting role for public power entities on the States Committee unless confidentiality concerns can be mitigated;
- consumer advocate offices or customer review groups of public power entities should have access to associate membership in a Consumer Advocate Organization;

¹ Available at: https://www.westernenergyboard.org/wp-content/uploads/Stakeholder-Comment-Template_Public-Interest-Final.pdf.

- the States Committee and the RO board should share Federal Power Act Section 205 filing rights before the Federal Energy Regulatory Commission (FERC);
- create a Consumer Advocates Organization with tariffed funding to support the work of state-appointed consumer advocates;
- consider establishing an RO office of public engagement;
- the Department of Market Monitoring (DMM) continue as market monitor in an RO;
- the DMM be required to coordinate with the Consumer Advocate Organization;
- the DMM charter be revised to reflect the RO's commitment to the public interest; and,
- DMM continue to report to the DMM Oversight Committee, and the Committee's membership should be expanded to include state regulators and consumer advocates.

1. *Do you think the set of tools shared by the working group is comprehensive? If not, please share other tools that should be considered.*

Cal Advocates recommends that the working group adopt three additional tools to protect the public interest. First, communications between all stakeholders and the RO board should be subject to *ex parte* rules. PJM Interconnection provides precedent for the use of *ex parte* rules in a Regional Transmission Organization (RTO).^{2,3} Second, the working group should incorporate a mechanism for the States Committee to request a rehearing of decisions made by the RO board. The Launch Committee has emphasized the Step 1 additions to the WEM Governing Body Charter as the major safeguards for the public interest.⁴ However, it is unclear what recourse stakeholders would have if the RO board were to take an action that is inconsistent with its public interest commitments. These first two tools are key protections to ensure fairness and preserve due process during policy development. Third, the RO itself (not just the Market Monitor) should be required to respond to data requests from the States Committee and individual state commissions. The working group notes the States Committee will have “[a]ccess to Market Monitor data and can request

² PJM Manual 34: PJM Stakeholder Process, at 15.4 Board Communication. Available at: https://www.pjm.com/directory/manuals/m34/index.html#Sections/154_Board_Communication.html.

³ PJM also has an Ombudsman, and a Compliance Team that is tasked to “report any and all complaints received, and/or violations of this Code of Conduct, to the president as soon as reasonably possible after they occur or are received, and to the Governance Committee of the Board of Managers on at least a quarterly basis.” PJM, *Code of Conduct*, at 10. Available at: <https://pjm.com/-/media/about-pjm/who-we-are/code-of-conduct.ashx>.

⁴ West-Wide Governance Pathways Initiative, *Public Interest Workshop* (Workshop slides), August 15, 2024 at 9. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Public-Interest-Workshop-Slide-Deck.pdf>.

analysis within Market Monitor resourcing,”⁵ and that “DMM will consider requests from a State Commission for specifically identified information or data (including raw data) concerning general market trends and the performance of the wholesale markets, subject to confidentiality provisions.”⁶ However, the current description of the proposal would materially erode state oversight over energy markets. Under the status quo, the CAISO responds to annual subpoenas issued by the CPUC⁷ as well as data requests from the California Energy Commission.⁸ An RO itself should be subject to the same obligation as the CAISO to respond to data requests from state regulators. PJM⁹ and the New England States Committee on Electricity (NESCOE)¹⁰ offer useful examples from outside of the CAISO for this practice.

Likewise, Cal Advocates is concerned that the current wording of the proposal that the States Committee “can request analysis *within Market Monitor resourcing*” is insufficiently robust.¹¹ Currently, there are few details proposed for the oversight and funding structure for an Independent Market Monitor (IMM), although Cal Advocates’ response to Question 7 elaborates on the topic. The working group’s current language could provide an incentive for certain interests to reduce IMM resourcing in an effort to avoid oversight. The CAISO Tariff language governing requests for information from state commissions states that:

⁵ Workshop slides at 12.

⁶ Workshop slides at 16.

⁷ CPUC, *Combined Subpoena for General RA information necessary for the CPUC to evaluate Resource Adequacy program and policies* (CPUC Subpoena), May 17, 2024. Available at: <https://www.caiso.com/Documents/may-20-2024-california-iso-general-resource-adequacy-subpoena.pdf>.

⁸ For example, see *California Energy Commission interconnection queue data request*, August 9, 2023. Available at: <https://www.caiso.com/documents/california-energy-commission-interconnection-queue-data-request.html>.

⁹ PJM maintains a list of personnel at state commissions who are authorized to receive confidential data, see: <https://www.pjm.com/committees-and-groups/state-commissions.aspx>. See also *Memorandum of Understanding Between PJM Interconnection, L.L.C. and Organization of PJM States, Inc.*, June 8, 2005 at 3. Available at: https://opsi.us/wp-content/uploads/2020/02/OPSI_PJM_MOU_executed_June_8_2005-1-1.pdf.

¹⁰ *Memorandum of Understanding Among ISO New England Inc., The New England Power Pool, New England States Committee on Electricity, LLC, Exhibit C: New England States Committee on Electricity, LLC Code of Conduct*, November 21, 2007 at 4. Available at: https://www.iso-ne.com/static-assets/documents/regulatory/part_agree/mou_final.pdf.

¹¹ Workshop slides at 12. Emphasis added.

DMM may deny a request when it determines, in its sole discretion, that complying with a request would be unreasonably burdensome or if it would interfere with the core market monitoring functions of DMM as defined in Section 5 of this Appendix P.¹²

Cal Advocates recommends that, at a minimum, the States Committee and state commissions have the right to request reasonable analysis from the IMM consistent with the conditions in the existing CAISO Tariff.

2. *Do you disagree with any of the tools shared by the working group? Are there any that should not be used to protect the public interest? If so, please share your rationale.*

Cal Advocates has no comment at this time.

3. *Do you agree with the tools shared to protect the public interest within the RO board? Do you have additional recommendations for consideration?*

See Cal Advocates answer to question 1 for additional recommendations.

4. *States Committee*

- a. *Do you agree with the structure and governance proposed by the working group? Why or why not? Do you have additional recommendations for consideration?*

The working group recommends that the States Committee continue the current Western Energy Imbalance Market (WEIM) Body of State Regulators (BOSR) “self-governance for most issues,” including a “consensus approach.”¹³ A consensus approach is likely to limit the States Committee’s effectiveness. Achievement of consensus on a variety of issues that may affect diverse and potentially conflicting state policies is likely to be too high of a threshold and could impede the States Committee’s ability to protect the public interest. The working group also proposes that “[a] subset of the States Committee representing one-quarter of states or one-quarter of load can vote to trigger the requirement for a super-majority (3/4) vote of RO Board on a

¹² *California Independent System Operator Corporation Fifth Replacement Tariff Appendix P*, April 1, 2017, §8.1 at 5. Available at: https://www.caiso.com/documents/appendixp_caisodepartmentofmarketmonitoring_asof_apr1_2017.pdf.

¹³ Workshop slides at 11.

particular topic.”¹⁴ This requirement appears to conflict with a consensus approach for the States Committee. Likewise, while the subset voting provision could provide a useful advisory input to the RO board on proposals, it does not represent full veto power for the States Committee because it still defers the decision to the RO Board. Additionally, the subset voting provision does not address the need for affirmative support from state regulators for proposals that go before the RO board.

Instead, Cal Advocates recommends the States Committee require a simple majority of load and a simple majority of states approve any proposal that goes to the RO board for a vote. Load-weighted voting would provide a mechanism to protect California ratepayers from paying for more than their fair share of RO operations including transmission investments that benefit the entire footprint of an RO in addition to California. RO voting policies that require support from both a majority of states and a majority of load are the best formulation for providing each participating state a meaningful role in decision making while also protecting the interests of California ratepayers.

The working group likewise recommends that the States Committee continue the existing funding mechanism to support its staffing needs.¹⁵ However, the existing funding mechanism¹⁶ for the BOSR is inadequate for an RO because the funding is not part of a tariff and is only based on a funding agreement that does not guarantee cost recovery.¹⁷ Cal Advocates recommends that the States Committee receive funding via a tariff to support independent staffing to serve the Committee’s needs. ISO-New England provides an example of tariffed funding for a States Committee.^{18,19}

¹⁴ Workshop slides at 12.

¹⁵ Workshop slides at 11.

¹⁶ For a discussion of the WEIM-BOSR funding agreement, see: <https://www.westernenergyboard.org/western-energy-imbalance-market-body-of-state-regulators/state-regulated-market-participant-funding-agreement/>.

¹⁷ *Term Sheet, Funding Agreement for EIM BOSR*, November 25, 2020. Available at: <https://www.westernenergyboard.org/wp-content/uploads/draft-BOSR-WIEB-SRMP-Term-Sheet-November-25-2020.pdf>.

¹⁸ *ISO-NE Tariff Section IV.A Recovery of ISO Administrative Expenses*, January 1, 2024 at Schedule 5. Available at: https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_4/section_iva.pdf.

¹⁹ *Memorandum of Understanding Among ISO New England Inc., The New England Power Pool, New England States Committee on Electricity, LLC*, November 21, 2007 at 4. Available at: https://www.iso-ne.com/static-assets/documents/regulatory/part_agree/mou_final.pdf.

Finally, the working group has not yet proposed a specific structure to oversee an IMM. Cal Advocates recommends that the States Committee and Consumer Advocates Organization both have a seat reserved on the committee that oversees the IMM. These roles would ensure that state regulators and consumer advocates guide the role of IMM and reinforce that the IMM too has a role to play in supervising markets that protect the public interest.

- b. *How has your experience been with other markets' States Committees (BOSR, COSR, MSC, etc.)? Are there any considerations recommended for this working group?*

Cal Advocates has no comment at this time.

- c. *Do you agree with the role of public power/PMA proposed by the working group? Do you have additional recommendations for consideration?*

Cal Advocates opposes any voting role for federal PMAs in the States Committee. At a minimum, PMAs, as federal entities, are not subject to state jurisdiction, which should be disqualifying for a voting role in the States Committee. Additionally, it is unclear how PMAs, as transmission and generation owners, could appropriately engage on a States Committee and simultaneously assuage concerns about access to market-sensitive confidential information.

Cal Advocates opposes a voting role for public power entities on the States Committee. Public power entities have dual roles in the WEIM and EDAM as both load-serving entities and generation-owning market participants. As competitors in an energy market, this could pose problems if market-sensitive information is shared with the States Committee since public power would be provided access to that confidential information. Any participation by public power entities on the States Committee would need to be limited to emphasizing load-side public interest concerns, but it is unclear how that distinction can be made. The competing priorities of load and generation are not easily disentangled within the same entity, as demonstrated by the need for the City of Los Angeles' Office of Public Accountability.²⁰ Nonetheless, if confidentiality concerns can be adequately resolved, a single seat for public power entities on the States Committee could be appropriate.

²⁰ <https://opa.lacity.gov/>

One solution to the problem of competing interests within public power entities would be to allow the consumer advocate office or relevant customer review group²¹ of a participating public power entity to participate in the Consumer Advocates Organization. Each state would have single associate membership allocated to represent any consumer advocate office or customer review group that is part of a public power entity in a Consumer Advocates Organization. This arrangement would ensure that the expertise provided by a Consumer Advocates Organization could benefit and support the consumer oversight functions of participating public power entities.

d. *How else might public power/PMA perspectives be incorporated?*

Cal Advocates has no comment at this time.

e. *Do you agree with the proposed relationship between the States Committee and the RO board? Do you have additional considerations or adjustments to the proposal?*

Cal Advocates disagrees with the proposed relationship between the States Committee and the RO board. The States Committee and the RO board should share Federal Power Act Section 205 filing rights before the Federal Energy Regulatory Commission to ensure that states collectively have adequate oversight over the RO. The States Committee should obtain Section 205 filing rights to ensure that it can submit its own proposals to FERC independently and without the approval from the RO.²²

²¹ Rather than dedicated consumer advocate offices, public power entities appear to more commonly have advisory committees of customers to represent consumer interests. For example, see the Seattle City Light's Review Panel (<https://www.seattle.gov/city-light-review-panel>), San Francisco Public Utilities Commission's Citizen's Advisory Committee Power Subcommittee (<https://www.sfpuc.gov/about-us/boards-commissions-committees/citizens-advisory-committee/power-subcommittee>), and Salt River Project's Customer Utility Panel (<https://www.srpnet.com/about/governance-leadership/customer-utility-panel>).

²² The Organization of Midcontinent Independent System Operator (MISO) States (OMS) Committee can request that MISO file an alternative cost allocation methodology (see MISO, *Rate Schedule 01, Appendix K, Filing Rights Pursuant to Section 205 of the FPA [sic]*, at II.E.3.e. November 19, 2013.). The ISO-NE Tariff allows its Regional State Committee to provide an alternative cost allocation proposal to be included with participating transmission owners' Section 205 filing (see ISO-NE *Transmission Operating Agreement, Article III Operating Authority*, 3.04(h)(vi)(C)). Southwest Power Pool's (SPP) Regional State Committee (RSC) can submit its own proposals to FERC over certain aspects of the SPP Tariff (see Southwest Power Pool Tariff §7.2, p. 67).

5. Consumer Advocates

- a. *Do you agree with the structure proposed by the working group? Do you think this is an effective means of engaging consumer advocates? Why or why not? Please share your rationale.*

Cal Advocates supports the structure proposed by the working group to engage Consumer Advocates, with two clarifications. Specifically, Cal Advocates supports the creation of a separate Consumer Advocate Organization with a tariff-based funding mechanism. This organization would be overseen by a board consisting of state-appointed consumer advocates. However, as discussed in Cal Advocates' response to question 4.a., the current WEIM-BOSR funding mechanism is not sustainable. The tariff-based funding approach used by the PJM Interconnection to fund the Consumer Advocates of the PJM States (CAPS) is the appropriate mechanism to ensure that consumer advocates are adequately resourced to pursue the public benefit.²³ Furthermore, the Consumer Advocate Organization should be self-governing and allowed to determine where and when it will intervene on behalf of its members. Any participation by the Consumer Advocate Organization should not preclude members from taking their own independent and incremental positions.

- b. *Do you think this proposal is effective in protecting the consumer interest? Why or why not? Please share your rationale.*

The working group's proposal will provide the baseline resources necessary for consumer advocates to carry out their work. However, protection of the consumer interest will depend on a variety of other factors, most especially the content of policy decisions made by the RO board. The working group's proposal represents a starting point, only a single aspect of consumer protection. Providing the means for consumer advocates to sustainably engage in stakeholder processes will not address the need for the RO to transparently consider and incorporate the policy feedback provided by consumer advocates.

Cal Advocates recommends that the working group consider an RO office of public engagement (OPE). Organizations hosting multi-state integrated energy markets are immensely complex endeavors, even to industry experts. An OPE would provide valuable support to members of the public and organizations that are seeking to understand how they can engage constructively

²³ Workshop slides at 14.

in RO policy making.

6. *Do you think the elements outlined in the presentation materials of the role of an Independent Market Monitor would be effective in helping to protect the public interest? If not, please explain your rationale and include any suggestions you can offer that would strengthen the role of an Independent Market Monitor.*

To assure that an IMM can protect the public interest, Cal Advocates recommends consideration of elements in addition to those outlined in the presentation materials. In general, Cal Advocates supports solutions that prioritize any IMM's ongoing independence, access to data, scope of authority within or across the RO footprint, and transparency for stakeholders. The role of the IMM for a new RO is a critical component in the design and implementation of the RO tariff. An IMM—whether that role is assigned to DMM or to another entity—must start concurrently with the RO. Importantly, the IMM must have the expertise, independence, and staff resources to sufficiently monitor the RO markets effectively and to provide truly independent advice and recommendations on market design issues.

However, several questions about the IMM remain outstanding. The Straw Proposal that informed the Step 1 Recommendation acknowledged “that the appropriate role of the DMM itself going forward vis a vis the RO is also an open question for Step 2.”²⁴ Cal Advocates' view is that this question is still open. DMM's role in a future RO—and even under the Step 1 change—is crucial and deserves specific attention from stakeholders.

To that end, Cal Advocates has several recommendations for the IMM. First, the existing DMM should continue as the market monitor in an RO. The current structure would provide value through reduced startup costs for an RO, and efficiency by taking advantage of the DMM's existing expertise and experience with WEIM. The DMM may need to re-structure to clarify roles and responsibilities vis-à-vis functions that are unique to the CAISO BAA and those that apply to the WEIM and EDAM. Cal Advocates is satisfied with the DMM's current structure that is internal to the CAISO but reports directly to the DMM Oversight Committee and is not under the CAISO management structure.²⁵

²⁴ WWGPI, *Phase 1 Straw Proposal, Appendix A*, April 10, 2024 at 29. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Phase-1-Straw-Proposal.pdf>.

²⁵ California ISO Organizational Chart, June 27, 2024. Available at: <https://www.caiso.com/Documents/California-ISO-Organizational-Chart.pdf>

Second, the DMM should be required to coordinate with the Consumer Advocate Organization. Cal Advocates affirms the recommendations for market oversight described in *A call to protect consumers and commit to the public interest*.²⁶

- 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.

Third, the DMM charter should be revised to reflect the RO's commitment to the public interest. DMM's mission is "[t]o provide independent oversight and analysis of the California ISO markets for the protection of consumers and Market Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses."²⁷ The West-Wide Governance Pathways Initiative (WWGPI) Step 1 Recommendation adopted by the CAISO Board of Governors and Western Energy Markets (WEM) Governing Body made several public interest additions to the WEIM charter.²⁸ These additions include efforts to "reduce, to the extent possible, overall economic cost to customers within the market footprint;" and to "help control costs to participate and in internal operations so as to ensure that favorable cost/benefit ratios are maintained for the benefit of market participants and customers." The same modifications should be incorporated into DMM's mission to ensure that its oversight aligns with the priorities expressed by the WEM Governing Body.

²⁶ Gridworks, *State Consumer Advocates and Western Electricity Regionalization: A call to protect consumers and commit to the public interest*, March 2024 at 12. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Public-Advocates-Office-Comments-on-WWGPI-Phase-1-Straw-Proposal.pdf>.

²⁷ Available at <https://www.caiso.com/market/Pages/MarketMonitoring/Default.aspx>

²⁸ Joint ISO Board of Governors and WEM Governing Body General Session Meeting, *Attachment 1: West-Wide Governance Pathways Initiative Step 1 Recommendation: Final Draft May 2024, Appendix D: Proposed Modifications to WEIM Charter*, August 13, 2024 at 17. Available at: <https://www.caiso.com/documents/attachment-1-west-wide-governance-pathways-initiative-step-1-recommendation-final-draft-proposal-may-2024.pdf>.

Fourth, it is unlikely that an external market monitor would be more beneficial to ratepayers than an internal market monitor at this time. Internal and external IMMs each provide different tradeoffs. An internal IMM tends to cost less and have the advantage of close proximity to ISO staff, which can expedite analysis.²⁹ Conversely, the independence of internal IMMs is potentially subject to greater pressures from RTO or Independent System Operator (ISO) management.³⁰ Internal IMMs also face pressures related to customer dissatisfaction. For instance, if an internal IMM makes recommendations that provoke certain segments of load or supply, the backlash can lead to defections from the market itself in the most severe cases.³¹ On the other hand, external IMMs provide greater distance (physical and psychological) from RTO/ISO organizations. However, there are only two external IMMs³² in the United States, largely because the upfront costs of developing expertise, software, and analytical infrastructure are large and few firms possess them on hand.³³ The existing protections for DMM's independence are currently sufficient and cost-effective.

Finally, DMM should continue to report to the DMM Oversight Committee, but the Committee's membership should be expanded. The DMM Oversight Committee should have seats reserved on it for state regulators, consumer advocates, and CAISO governors. Including state regulators and consumer advocates will provide additional protection of the public interest. Retaining CAISO on the DMM Oversight Committee will protect any interests that may be unique to the CAISO BAA.

7. Do you have any additional feedback you would like to share with the Launch Committee on these topics?

²⁹ Renewable Energy World, *FERC seeks comments on the role of Independent Transmission Monitors*, March 17, 2022. Available at <https://www.renewableenergyworld.com/policy-regulation/ferc-seeks-comments-on-the-role-of-independent-transmission-monitors/>.

³⁰ SPP's IMM has faced accusations that it fired high-profile staff when they disagreed with SPP management positions. RTO Insider, *SPP Squelching IMM Independence, Former Monitors Say*, May 30, 2016. Available at <https://www.rtoinsider.com/25516-spp-squelching-IMM-independence-former-monitors-say/>

³¹ RTO Insider, *Independent Market Monitors Wouldn't Have It Any Other Way*, June 6, 2016. Available at <https://www.rtoinsider.com/25533-independent-market-monitors-wouldn-t-have-it-any-other-way/>

³² Potomac Economics serves as market monitor for the Midcontinent ISO, Electric Reliability Council of Texas, the New York ISO, and ISO New England (<https://www.potomaceconomics.com/about-us/>), while Monitoring Analytics serves PJM Interconnection (<https://www.monitoringanalytics.com/home/index.shtml>).

³³ E.g., "When the Public Utility Commission of Texas issued an RFP [in 2015] for monitoring of ERCOT, only incumbent Potomac Economics submitted a bid." Available at <https://www.rtoinsider.com/25533-independent-market-monitors-wouldn-t-have-it-any-other-way/>

Cal Advocates has no comment at this time.