

## C O M M E N T

# COMMENT ON RETHINKING GRID GOVERNANCE FOR THE CLIMATE CHANGE ERA

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In *Rethinking Grid Governance for the Climate Change Era*, Prof. Shelley Welton makes a compelling case for why “U.S. grid governance must be redesigned to accommodate a new era of regulatory priorities that include responding to climate change.”<sup>1</sup> As the operators of regional electricity markets and managers of the transmission grid, Regional Transmission Organizations (RTOs)<sup>2</sup> “must play a pivotal role”<sup>3</sup> in achieving clean electricity goals.<sup>4</sup> However, as Professor Welton details, RTO governance structures<sup>5</sup> are in many ways designed to resist the types of changes necessary to enable a transition to a clean electric grid.<sup>6</sup>

Professor Welton offers four pathways to better grid governance, including increasing public oversight and control by enhancing state and federal oversight capabilities.<sup>7</sup> Here, we focus on the role of states, and, in particular, the role that state consumer advocates can play in increasing RTO accountability, promoting cost-effective market and grid improvements, and advancing clean energy goals. We first discuss three developments that may serve as building blocks to potential reforms: the origin of state consumer

advocate offices, the formation of regional state committees, and the Federal Energy Regulatory Commission's (FERC's) effort to increase RTOs' accountability to consumers. Then, we review enduring barriers to participation in RTO stakeholder processes and offer recommendations.

## I. State Consumer Advocates

Utility consumer advocates trace their origin to the 1970s when a confluence of factors, including the energy crisis of the early 1970s, caused sharp and more frequent utility retail rate increases.<sup>8</sup> These increases heightened consumer interest in energy prices and prompted calls from consumer groups for increased utility regulation.<sup>9</sup> State legislatures responded by creating consumer advocacy offices to represent the interests of consumers before state public utility commissions (PUCs) in an effort to level the playing field against well-represented and well-resourced utilities.<sup>10</sup> Today, 44 states and the District of Columbia have consumer advocates.<sup>11</sup>

While the structure of state consumer advocate offices varies,<sup>12</sup> three core attributes define legislatively created consumer advocates: (1) an explicit mandate to represent consumers, (2) structural separation from the state utility regulatory commission; and (3) standing in cases and the power to appeal decisions.<sup>13</sup> Thus, consumer advocates

1. Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, 109 CAL. L. REV. 209, 214 (2021).

2. The term Regional Transmission Organization is used here to include Independent System Operators (ISOs).

3. Welton, *supra* note 1, at 240.

4. *See id.* at 239 (describing state clean electricity goals and decarbonization efforts). President Joe Biden has also set a goal for the United States to reach 100% carbon pollution-free electricity by 2035. White House Press Release, *Fact Sheet: Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

5. As Professor Welton describes, governance structures vary from RTO to RTO; in particular, the structure of the California ISO is distinct from the membership-driven RTOs/ISOs such as PJM. *See Welton, supra* note 1, at 226-30, Appendix A. Here, we focus on RTOs that fall under the PJM model described by Professor Welton, and, in particular, RTOs whose territory covers more than one state. *See id.* at 227-29.

6. *See generally id.* at 241-64.

7. *Id.* at 210, 267-70.

8. Elin Swanson Katz & Tim Schneider, *The Increasingly Complex Role of the Utility Consumer Advocate*, 41 ENERGY L.J. 1, 6 (2020) (citation omitted).

9. *Id.* (citations omitted).

10. *Id.* at 7 (citations omitted).

11. Jake Duncan & Julia Eagles, Institute for Market Transformation, *Public Utilities Commissions and Consumer Advocates: Protecting the Public Interest*, prepared for the National Council on Electricity Policy, administered by the National Association of Regulatory Utility Commissioners Center for Partnerships & Innovation, at 2 (Dec. 2021), [https://www.imt.org/wp-content/uploads/2022/01/FINAL\\_NCEP\\_Consumer\\_Advocates\\_Mini\\_Guide.pdf](https://www.imt.org/wp-content/uploads/2022/01/FINAL_NCEP_Consumer_Advocates_Mini_Guide.pdf).

12. *Id.* (“Consumer advocates fall into four general categories: independent state agencies, divisions of state attorneys general . . . nonprofit organizations, or arms of the legislature.”).

13. *Id.* at 3; Katz & Schneider, *supra* note 8, at 9.

play a particular role in utility oversight, distinct from utility regulators and other agencies that may serve the general public interest. Whereas PUCs fulfill the complex role of balancing ratepayer, utility, industry, and other interests, a state consumer advocate's primary mission is to represent the interests of consumers.<sup>14</sup> These interests include maximizing the benefits of consumer-funded investments in clean energy generation and other decarbonization initiatives.<sup>15</sup>

In today's complex regulatory landscape, this often means acting on behalf of consumers in diverse state, regional, and federal forums. While state consumer advocate offices were primarily designed to operate in discrete, formal proceedings before PUCs,<sup>16</sup> consumer advocates' work is increasingly expanding beyond litigated proceedings in their respective states to stakeholder and other processes that implicate regional and national issues.<sup>17</sup> This includes participating in RTO stakeholder processes, which, as Professor Welton notes, have significant impacts on consumers and states' ability to implement their policy goals.<sup>18</sup>

Reflecting the varying stakeholder governance processes across RTOs, the ways in which consumer advocates participate in these processes differ from RTO to RTO. For example, the Consumer Advocates of the PJM States (CAPS) is a tariff-funded nonprofit organization formed to coordinate the participation of consumer advocates in the PJM stakeholder process.<sup>19</sup> Additionally, individual consumer advocates in the PJM service territory can participate in the stakeholder process through the End-Use Customer sector and as part of the Public Interest and Environmental Organization user group.<sup>20</sup> In MISO (Midcontinent Independent System Operators), consumer advocates participate in the stakeholder process through the Public Consumer Advocates sector, which has an 8% weighted voting share on MISO's senior stakeholder committee.<sup>21</sup> In ISO-

NE (ISO New England), consumer advocates can participate as members as part of the End-User sector.<sup>22</sup>

## II. Regional State Committees

As Professor Welton observes, when FERC established the framework for RTOs, it declined to grant states any formalized role in RTO governance,<sup>23</sup> instead adopting a "flexible approach that allows states to play appropriate roles in RTO matters."<sup>24</sup> Shortly thereafter, however, noting that there was not a formal process for state representatives to engage in dialogue with RTOs, FERC proposed to establish Regional State Advisory Committees.<sup>25</sup> As proposed, these committees would have been permitted to work with RTOs to "seek regional solutions to issues that may fall under federal, state, or shared jurisdiction," including resource adequacy standards and transmission planning and expansion.<sup>26</sup> While the FERC rule proposing Regional State Advisory Committees was not adopted,<sup>27</sup> groups of states nevertheless began forming their own versions of Regional State Committees (RSCs), starting with the Organization of MISO States (OMS) in 2003.<sup>28</sup> Additional groups of states followed suit in the subsequent years.<sup>29</sup>

Today, state interests are coordinated through RSCs in each of the four multi-state RTOs.<sup>30</sup> In addition to OMS, these RSCs are: the SPP Regional State Committee (SPP RSC), the Organization of PJM States (OPSI), and the New England States Committee on Electricity (NESCOE).<sup>31</sup> The Organization of MISO States, OPSI,

14. See Duncan & Eagles, *supra* note 11, at 1.

15. See Welton, *supra* note 1, at 239 (discussing state renewable energy policies and other policies to promote decarbonization).

16. Duncan & Eagles, *supra* note 11, at 1; Katz & Schneider, *supra* note 8, at 8 ("Utility consumer advocates were designed to effectively advocate in the types of proceedings used to establish utility rates in the late 1970s and early 1980s . . . . These typical commission proceedings at that time included rate cases, affiliate proceedings, and merger approvals.").

17. See Duncan & Eagles, *supra* note 11, at 5; Katz & Schneider, *supra* note 8, at 17-18.

18. See Welton, *supra* note 1, at 230-32, 238-40, 257-60; see also Duncan & Eagles, *supra* note 11, at 5-6; Katz & Schneider, *supra* note 8, at 17-18.

19. PJM Interconnection, L.L.C., Order Accepting Tariff Revisions, 154 FERC ¶ 61147, at para. 2 (Feb. 29, 2016) [hereinafter PJM Order].

20. Christopher A. Parent et al., Exeter Associates, Inc., *Governance Structure and Practices in the FERC-Jurisdictional ISOs/RTOs*, prepared for New England States Committee on Electricity, at 6-3 (Feb. 2021), <https://nescoc.com/resource-center/isorto-governance-feb2021/>. Each state consumer advocate may nominate one representative to serve as an ex officio member in the End-Use Customer sector. *Id.* at 6-5 (citation omitted). Ex officio members have voting rights at PJM's Members Committee and Markets and Reliability Committee. About PJM, Membership Enrollment, <https://www.pjm.com/about-pjm/member-services/membership-enrollment>.

21. Parent et al., *supra* note 20, at 4-3, 4-7; Welton, *supra* note 1, at 253, Appendix A.

22. Parent et al., *supra* note 20, at 3-4. With respect to the other multi-state RTO, SPP (Southwest Power Pool), consumer advocates can participate as alternative power/public interest members. *Id.* at 7-2. Notably, however, in 2019, FERC found that SPP's membership exit fee for non-transmission owners was unjust and unreasonable and created a barrier to membership, and it ordered SPP to eliminate the fee for non-transmission owners. See American Wind Energy Association and the Wind Coalition v. Southwest Power Pool, Inc., Order on Complaint, 167 FERC ¶ 61033, at ¶¶ 2, 49, 63 (Apr. 18, 2019). SPP is considering additional related changes. See Tom Kleckner, *SPP Briefs: Week of Feb. 14, 2022*, RTO INSIDER, <https://www.rtoinsider.com/articles/29609-spp-briefs-021422> (describing staff proposal that would lower the membership withdrawal deposit amount for groups such as public interest organizations and consumer advocates).

23. Welton, *supra* note 1, at 258.

24. FERC Order No. 2000, Regional Transmission Organizations, 65 Fed. Reg. 810, 938 (Dec. 20, 1999) (codified at 18 C.F.R. pt. 35) [hereinafter Order No. 2000]; *id.* at 936, 938 (noting that "[a]lmost all commenters on this issue expressed support for a clear state role in governance," but finding that it was "not appropriate to try to set out a full set of states' roles" in the Order).

25. See Notice of Proposed Rulemaking, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, 67 Fed. Reg. 55451, at ¶¶ 551-554 (Aug. 29, 2002) (codified at 18 C.F.R. pt. 35) [hereinafter NOPR Remedying Undue Discrimination] (also discussing a National Governors Association proposal to establish "Multi-State Entities"); see also William H. Smith Jr., *Formation and Nurture of a Regional State Committee*, 28 ENERGY L.J. 185, 189 (2007).

26. NOPR Remedying Undue Discrimination, *supra* note 25, at ¶ 554.

27. Smith, *supra* note 25, at 189 (citation omitted).

28. *Id.* at 196.

29. See *id.* at 202-03; Welton, *supra* note 1, at 228; Stephanie Lenhart & Dalten Fox, *Participatory Democracy in Dynamic Contexts: A Review of Regional Transmission Organization Governance in the United States*, 83 ENERGY RES. & SOC. SCI. 1, 10 (2022).

30. *Id.*

31. See Parent et al., *supra* note 20, at 3-2, 4-1, 6-1, 7-2.

and SPP RSC are comprised of representatives from utility regulatory authorities, often state PUC commissioners, within their footprint.<sup>32</sup> NESCOE is governed by a board of managers appointed by the governors of the six New England states.<sup>33</sup>

Reflecting the distinct governance structures of their corresponding RTOs and their individualized development processes, the authority and power of each RSC varies.<sup>34</sup> For example, the State Regulatory Authorities sector is the most powerful weighted voting bloc within MISO's senior stakeholder committee, holding 4 of 25 seats,<sup>35</sup> and OMS selects the representatives to fill these seats.<sup>36</sup> Additionally, OMS has a defined role in making resource adequacy determinations<sup>37</sup> and certain rights and responsibilities with respect to transmission planning and cost allocation.<sup>38</sup> Similarly, the SPP RSC has specific responsibilities to develop regional proposals regarding resource adequacy and transmission planning and cost allocation, including section 205<sup>39</sup> filing rights (through SPP) for these areas.<sup>40</sup> The Organization of PJM States can engage in the stakeholder process and raise issues and provide input, but it does not vote.<sup>41</sup> Similarly, NESCOE participates in committee meetings and can make proposals or amendments in the stakeholder process, but it is not a member and does not vote.<sup>42</sup>

### III. FERC "Responsiveness" Requirements

While RSCs gave states an additional avenue to impact the stakeholder process, this did not fully address concerns that RTO governance design was insufficiently protective of the public interest.<sup>43</sup> In FERC Order No. 719, issued nine years after its Order on RTOs,<sup>44</sup> FERC took action to attempt to "enhanc[e] the responsiveness of RTOs and ISOs to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for

electricity services."<sup>45</sup> After considering stakeholder input, FERC ruled that RTOs "must provide an avenue for customers and other stakeholders to present their views on RTO and ISO decisionmaking, and to have those views considered."<sup>46</sup> Accordingly, FERC adopted four "responsiveness" criteria (inclusiveness, fairness in balancing diverse interests, representation of minority positions, and ongoing responsiveness)<sup>47</sup> intended to establish a means for customers and other stakeholder to have a form of direct access to RTO boards of directors, and thereby to increase the boards' responsiveness to these entities.<sup>48</sup> Notably, the "ongoing responsiveness" criterion instructs that "responsiveness to customers and other stakeholders should continually be evaluated for improvement."<sup>49</sup> However, as Professor Welton notes, RTOs' responses to Order No. 719's responsiveness directives were varied, and the Order's impacts since its issuance have been somewhat limited.<sup>50</sup>

For example, in response to Order No. 719, ISO-NE established a Consumer Liaison Group (CLG) to "help end-users and consumer representatives understand stakeholder processes and key issues."<sup>51</sup> The CLG is governed by a Coordinating Committee of 12 elected members from the six New England states.<sup>52</sup> The CLG conducts open quarterly meetings that include updates from ISO-NE management and speakers on issues of importance to end-use consumers.<sup>53</sup> The CLG has provided an important venue to facilitate information-sharing from ISO-NE and to provide for greater understanding of ISO-NE's activities, decisionmaking processes, and potential impacts on consumers.<sup>54</sup> However, the CLG is primarily an educational entity; it is not an advocacy group that represents consumers' interests, and it is not a participating member in the stakeholder process. Thus, while providing a useful service to the public, the CLG alone cannot ensure that ISO-NE is sufficiently responsive to consumer concerns.

32. *Id.* at 4-2, 6-2, 7-2.

33. *Id.* at 3-3.

34. Lenhart & Fox, *supra* note 29, at 10; *see also id.* at 9, Table 5; Welton, *supra* note 1, at Appendix A.

35. Welton, *supra* note 1, at 268; Parent et al., *supra* note 20, at 4-7.

36. *Id.*

37. Welton, *supra* note 1, at 265-66, Appendix A; Lenhardt & Fox, *supra* note 29, at 10.

38. Parent et al., *supra* note 20, at 4-3-4-4.

39. Section 205 of the Federal Power Act.

40. Parent et al., *supra* note 20, at 7-2 (citation omitted); Welton, *supra* note 1, at 269, n.363 (citation omitted) (noting the RSC's control over resource adequacy). The SPP may also file its own proposals in addition to the SPP RSC's. Parent et al., *supra* note 20, at 7-4 (citation omitted).

41. Parent et al., *supra* note 20, at 6-3; *see also id.* at 6-2 (discussing specific OPSI and state roles regarding transmission planning, including PJM's State Agreement Approach for public policy transmission).

42. *Id.* at 3-4. NESCOE has a defined role in the ISO-NE tariff in connection with the transmission planning process for public policy-driven transmission, *id.*, and it has explored reforms to the existing process.

43. *See* Welton, *supra* note 1, at 226; *see also, e.g.,* Michael Brooks, *FERC Probed on RTO Governance, Market Issues*, RTO INSIDER (June 12, 2019), <https://www.rtoinsider.com/articles/22231-ferc-probed-on-rto-governance-market-issues> (quoting Rep. Bobby Rush, Chair of the House Energy and Commerce Committee's Subcommittee on Energy, "consumer voices are often overlooked, ignored or cut out of the RTO process entirely.").

44. *See* Order No. 2000, *supra* note 24.

45. FERC Order No. 719, Wholesale Competition in Regions With Organized Electricity Markets, 73 Fed. Reg. 64100, at ¶ 12 (Oct. 28, 2008) (codified at 18 C.F.R. pt. 35) [hereinafter Order No. 719].

46. *Id.* at ¶ 503.

47. *Id.* at ¶¶ 482, 504.

48. Welton, *supra* note 1, at 226 (citing Order No. 719).

49. Order No. 719, *supra* note 45, at ¶ 509.

50. *See* Welton, *supra* note 1, at 226; Brooks, *supra* note 43 (quoting Rep. Frank Pallone, Chair of the House Energy and Commerce Committee: "[T]here has not been a comprehensive review by FERC of each RTO's stakeholder process to ensure compliance with the requirements of Order 719."); *see also* Federal Energy Regulatory Commission Report on the Office of Public Participation, at 15 (June 24, 2021), <https://www.ferc.gov/media/ferc-report-office-public-participation> (describing public comments suggesting that the Office "help stakeholders and the public better understand, and participate in, the processes and proceedings of the Commission-regulated RTOs and ISOs").

51. ISO New England Inc. and New England Power Pool, Order Accepting Compliance Filing, 133 FERC ¶ 61070, at para. 13 (Oct. 21, 2010) [hereinafter ISO-NE & NEPOOL Order].

52. *See* Joint Report of the Consumer Liaison Group Coordinating Committee and ISO New England, 2021 Report of the Consumer Liaison Group, at 1-2 (Mar. 9, 2022), [https://www.iso-ne.com/static-assets/documents/2022/03/2021\\_report\\_of\\_the\\_consumer\\_liaison\\_group\\_final.pdf](https://www.iso-ne.com/static-assets/documents/2022/03/2021_report_of_the_consumer_liaison_group_final.pdf).

53. *See id.* at 1, §3.

54. *See id.* at 1.

#### IV. Barriers to Participating in and Influencing RTO Stakeholder Processes

Several barriers impact states' and consumer advocates' ability to participate in RTO stakeholder processes in a manner that ensures the protection of state and consumer interests. First, at least in some cases and circumstances, states are limited by a lack of relative power<sup>55</sup> and formal authority to influence RTO action, which can impede their ability to achieve state policy goals. For example, Professor Welton discusses capacity market reforms in ISO-NE and PJM "that make it significantly harder for renewables to compete in their markets—thereby putting aggressive state renewable energy goals at risk."<sup>56</sup> While, as noted above, the RSCs in ISO-NE and PJM engage with their respective stakeholder processes, they do not vote and otherwise have limited authority.

Therefore, these RSCs and their member states often rely on informal measures to try to impact RTO decision-making. For example, in 2020, governors of five of the New England states released a statement arguing that the region's wholesale electricity markets and organizational structures must evolve toward a clean energy future.<sup>57</sup> The statement criticized the region's wholesale market design as "misaligned with [the] States' clean energy mandates" and argued that it "thereby fails to recognize the full value of [the] States' ratepayer-funded investments in clean energy resources."<sup>58</sup> NESCOE has also addressed similar issues in communications to ISO-NE.<sup>59</sup> Similarly, in a 2021 letter to the PJM Board, OPSI set forth core principles to guide discussion about the evolution of market design in PJM, including that "[s]tate procurements or competitive solicitations, policy choices, emissions levels, or clean energy requirements must be respected and accommodated, rather than over-ridden or made infeasible by PJM market rules."<sup>60</sup>

While, as noted above, there have been developments in both regions with respect to market design reforms,<sup>61</sup> this continuing process has been long and complex, and has been impacted by the fact that states have limited formal power within RTO governance structures.

A lack of relative power in the stakeholder process also impacts consumer advocates, which are often "lumped in with end-use customers."<sup>62</sup> For example, in both ISO-NE and PJM, voting power is divided among industry sectors, and consumer advocates can participate in the stakeholder process as voting members in the end-user sector.<sup>63</sup> However, this grouping includes a diversity of interests within the sector.<sup>64</sup> In PJM, consumer advocates are grouped with industrial and commercial end-user stakeholders, which make up the majority of the sector.<sup>65</sup> In ISO-NE, the end-user sector includes consumer advocates, industrial and commercial users, local government users, and environmental organizations; and consumer advocates constitute approximately 11.5% of the voting membership within the sector.<sup>66</sup> While the interests of these stakeholders certainly align in some respects, certain consumer interests, including, in particular, retail consumer interests, risk being drowned out.<sup>67</sup>

In addition to limitations with respect to a lack of formal authority and voting power, the technical complexity and time-intensity of RTO stakeholder processes present significant resource challenges for states and consumer advocates. "The RTOs and market participants play in a highly technical world of acronyms, complex engineering, and economics. Participation in the daily grind of RTO decision-making and FERC oversight requires not only technical understanding but a great deal of time."<sup>68</sup> In response to these demands, participants typically utilize some combination of dedicating staff to engage in the stakeholder process, hiring outside consultants to keep them informed, and strategically determining where and when to engage.<sup>69</sup> Participation can be prohibitively cost-

55. As Professor Welton details, in terms of voting power, industry interests most often dominate RTO stakeholder processes. *See* Welton, *supra* note 1, at 227, 253, 268, Appendix A.

56. *Id.* at 246. The situation with respect to capacity market reforms in both ISO-NE and PJM has continued to develop. *See, e.g.*, Ethan Howland, *PJM's "Focused" MOPR Takes Effect, Boosting Renewables and Nuclear as FERC Commissioners Deadlock*, UTILITY DIVE (Sept. 20, 2021), <https://www.utilitydive.com/news/pjm-focused-mopr-takes-effect-ferc-capacity-market/6074171/>; Ethan Howland, *FERC Approves ISO-NE Plan to End MOPR in 2025, While Accepting Some Renewables in Capacity Auctions*, UTILITY DIVE (published Apr. 4, 2022, updated May 31, 2022), <https://www.utilitydive.com/news/iso-ne-capacity-mopr-minimum-offer-clean-energy/621487/>.

57. *See* Statement of the Governors of Connecticut, Maine, Massachusetts, Rhode Island, and Vermont, *New England's Regional Wholesale Electricity Markets and Organizational Structures Must Evolve for 21st Century Clean Energy Future* (Oct. 14, 2020), <https://nescoc.com/resource-center/govstmt-reforms-oct2020/>.

58. *Id.* at 2. The statement also identified issues regarding transmission planning and governance.

59. *See, e.g.*, Letter from NESCOE to ISO-NE Board of Directors, November 1, 2021 State Official/ISO-NE Board Meeting on ISO-NE Response to Advancing the Vision, (Oct. 29, 2021), [https://nescoc.com/resource-center/memo\\_iso\\_adv\\_vision/](https://nescoc.com/resource-center/memo_iso_adv_vision/).

60. Letter from the Organization of PJM States to the PJM Board of Managers (Jan. 8, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210114-opsi-letter-re-the-future-resource-adequacy.ashx>; *see also* Jennifer Chen & Gabrielle Murnan, *State Participation in Resource Adequacy Decisions in Multistate Regional Transmission Organiza-*

*tions*, DUKE U. NICHOLAS INST. FOR ENV'T POL'Y SOLUTIONS, at 14 (Mar. 2019), <https://nicholasinstitute.duke.edu/publications/state-participation-resource-adequacy-decisions-multistate-regional-transmission> (discussing letters from OPSI to the PJM Board).

61. *See, e.g., supra* note 56.

62. Welton, *supra* note 1, at 227.

63. *See supra* Part I.

64. Lenhart & Fox, *supra* note 29, at 8.

65. *See id.* at 9, Figure 6.

66. *Id.*; NEPOOL, Current Members, [https://nepool.com/participants/?\\_sectors=end-user&\\_voting\\_member=y&\\_per\\_page=-1](https://nepool.com/participants/?_sectors=end-user&_voting_member=y&_per_page=-1).

67. *See* Michael H. Dworkin & Rachel Aslin Goldwater, *Ensuring Consideration of the Public Interest in the Governance and Accountability of Regional Transmission Organizations*, 28 ENERGY L.J. 543, 584 (2007) (citation omitted):

Even if representatives of the public interest (both governmental and non-governmental) have a designated seat at the table (for example, as members of the "end user" stakeholder group), if there are very few actual human beings representing the public interest in the room and participating in negotiations, they are less likely to be heard.

68. *Id.*; *see also* ISO-NE & NEPOOL Order, *supra* note 51, at ¶ 67 ("We recognize that existing RTO/ISO stakeholder and board processes present resource challenges for certain stakeholders, including many consumer advocates, and may present barriers to the full, open participation of stakeholders in RTO/ISO governance matters.")

69. *See* Katz & Schneider, *supra* note 8, at 17; Lenhart & Fox, *supra* note 29, at 8; Dworkin & Goldwater, *supra* note 67, at 584.

ly.<sup>70</sup> Additionally, it is worth noting that, while RSCs help states to address these resource challenges, other than in PJM,<sup>71</sup> consumer advocates do not have the benefit of such formal resource-sharing and coordination.<sup>72</sup>

## V. Recommendations

Professor Welton and others have offered numerous suggestions aimed at ensuring that state and consumer interests are appropriately considered and addressed in RTO stakeholder processes. In line with Professor Welton's suggestion that RTO governance structures could be reformed to provide a strong role for state interests,<sup>73</sup> stakeholder processes could be reformed to give consumer advocates meaningful voting power apart from the voting power of other individual end-users. This could be accomplished through sector reform, vote-weighting reform, or potentially other methods. Currently in New England, the consumer advocates from four New England states are voting members in the stakeholder process.<sup>74</sup> Under current sector weighting, this means that state consumer advocates collectively hold approximately 2% of the overall voting power in the stakeholder process.<sup>75</sup> While changing this structure would not guarantee any particular substantive changes, it would help ensure that consumer advocates have a meaningful voice and that their concerns are considered.

Beyond giving consumer advocates more voting power within the stakeholder process, RTOs could also consider ensuring that consumer advocates have a voice directly on their boards by requiring that at least one member have

experience representing consumers. This requirement could be accompanied by a requirement to have a board standing committee specifically dedicated to responding to state and consumer issues, similar to the finance, planning, and human resources already utilized by RTOs.<sup>76</sup>

In addition to giving consumer advocates more formal power, RTOs could take additional action to provide consumer advocates with resources to facilitate their participation in the stakeholder process. For example, the Massachusetts Attorney General's Office, along with other state consumer advocates in New England, has advocated for the creation of an independent, tariff-funded organization to assist in representing the interests of consumers in the ISO-NE stakeholder process,<sup>77</sup> similar to PJM's CAPS. As FERC found in approving related tariff revisions, "funding CAPS is a reasonable business expense of PJM which will benefit PJM's ratepayers by 'increasing its responsiveness to the needs of customers and other stakeholders,' and by making the stakeholder process more inclusive, transparent, and robust."<sup>78</sup> Establishing similar organizations in other regions could similarly provide such benefits.

## V. Conclusion

To enable a clean energy transition, RTOs will need to take action to integrate new resources and technologies into energy markets and the transmission grid. While additional actions will no doubt be necessary, empowering states and consumer advocates within the RTO stakeholder process can provide traction to enable further reforms.

70. *Id.*

71. See *supra* Part I.

72. Moreover, while state utility regulators operate with limited resources, consumer advocates are typically even more constrained. Nationally, consumer advocates operate with roughly 10% of the staff and budget that PUCs have, according to data gathered by the Institute for Public Utilities and Rocky Mountain Institute. Duncan & Eagles, *supra* note 11, at 3.

73. Welton, *supra* note 1, at 268.

74. See NEPOOL, *supra* note 66.

75. Letter from the Consumer Advocates of New England (CANE) to Heather Hunt, Executive Director, NESCOE, at 5 (Mar. 26, 2021), <https://new-englandenergyvision.files.wordpress.com/2021/03/consumer-advocates-of-new-england-comments.pdf> [hereinafter Letter from CANE to NESCOE].

76. See National Association of State Utility Consumer Advocates, *Model Corporate Governance for Regional Transmission Organizations and Independent System Operators*, at 13 (2009), <https://nasca.org/wp-content/uploads/2009/01/Model-RTO-.pdf>; NESCOE, New England Energy Vision Statement Report to the Governors, at 17 (June 2021), [https://nescoc.com/resource-center/advancing\\_the\\_vision/](https://nescoc.com/resource-center/advancing_the_vision/) (recommending that ISO-NE establish a standing Board of Director Committee on State and Consumer Responsiveness).

77. Letter from CANE to NESCOE, *supra* note 75, at 3-6.

78. PJM Order, *supra* note 19, at ¶ 39 (quoting Order No. 719).