William Julian II
43556 Almond Lane
Davis, CA 95618
530-219-7638 billjulian2@gmail.com

April 22, 2025

Senator Tom Umberg, Chair
Senate Judiciary Committee
1020 O Street Room 3240
Sacramento CA 95814

Re: Oppose SB 540 (Becker and Stern)

Chairman Umberg and Committee Members:

We[1] respectfully oppose Senate Bill 540 and urge a NO vote on the measure for the following reasons. SB 540 permits the operator of the California grid and the electricity markets – the California Independent System Operator (CAISO) -- to ignore existing statutory requirements that assure accountability to the people of California to protect the public health, the environment, and to minimize electricity costs and maximize efficient use of our electricity resources, contained in Public Utility Code section 345.5.[2]

SB 540 retains the CAISO in a diminished form, to "operate" the transmission grid under the direction of a new regional organization (RO) which will operate the electricity markets. The CAISO will transfer to the new RO its key legal authorities to propose to FERC all tariffs and market rules. The new RO will be a Delaware, not California, corporation. Incorporating in Delaware removes the new market operator from any oversight by California's Attorney General, who has authority over the CAISO.

SB 540 destroys the legal underpinning for California's renewable portfolio standard and its commitment to local renewable development and the concomitant jobs created through the current operation of the RPS under Pub. Util. Code section 399.16. It opens the floodgates to massive inflows of coal- and gas-fired electric generation, contrary to California's laws and policies to minimize greenhouse gases.

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[1] Loretta Lynch is a lawyer and former President of the California Public Utilities Commission during the California Energy Crisis of 2000-2001. Bill Julian is a lawyer, former legislative staff (Consultant to Assembly Utilities and Commerce and Senate Energy) and former Commission staff (Legislative Director and Legal Advisor.)

[2] Pub. Util. Code section 345.5, added by Ch. 847, Stats. 2002 (SB 1753 (Bowen)). The CAISO board is appointed by the Governor and confirmed by the Senate, a provision added at the height of the California Energy Crisis to provide accountability. Pub. Util. Code section 337, See Chapter 1, Stats. 2001 (First Extra Session, AB 5 Keeley), section 8.

SB 540 makes California much more vulnerable to the Trump Administration's threats to invalidate our carbon reduction and other clean energy laws. And it decisively weakens California's ability to extricate ourselves from the affordability crisis faced by California's businesses and families.

Proponents claim that SB 540 contains protections against the extreme risks and uncertainties of their proposal. One involves a set of pre-conditions that must be satisfied before the CAISO can "use" the RO's electricity markets or before the CAISO can choose to run the markets according to the RO's new rules. Another is the possibility of unilateral withdrawal. Neither is effective.

1. SB 540's "In Lieu of" Language Nullifies California's Law Requiring Electricity Markets to be "Consistent with" California's Public Health and Environmental Laws and Requirements to Minimize Costs.

SB 540's proposed new Public Utilities Code section 345.6(a) specifically abrogates Pub. Util. Code section 345.5(b), which requires the CAISO to run electricity markets consistent with all of the consumer and environmental protections listed in Section 345.5(b). SB 540 allows the CAISO to "use energy markets" governed by a yet-to-be-formed RO **"in lieu of" Section 345.5(b)**, which details the CAISO's public interest responsibilities to the people of California. The "in lieu of" language:

- allows the RO to propose and operate our electricity markets without following "applicable state law intended to protect the public's health or the environment" (section 345.5(b)(3)) creating the troubling precedent of exempting electricity markets from the entirety of California's public health and environmental laws;
- eliminates the consumer protection obligation to "[reduce] to the extent possible, the overall economic cost to the state's consumers" (section 345.5(b)(2);
- eliminates the obligation to "make the most efficient use of available energy resources" (section 345.5(b)(1) including the state's abundant local solar, hydroelectric, geothermal and energy efficiency resources;
- eliminates the requirement that our electricity markets "maximize[e] availability of existing electric generation resources necessary to meet the needs of the state's consumers (section 345.5(b)(4).

SB 540's "in lieu of" language replaces specific California statutes that require the CAISO to minimize prices and maximize electricity for California consumers. SB 540's "in lieu of" language exempts the running of our electricity markets from current California laws that protect the public's health and the environment. The "in lieu of" language demonstrates that this bill will create a difference between how CA's electricity markets operate today and how they will operate if SB 540 is enacted.

If, as proponents claim, SB 540 does not change current laws about how electricity markets are run then SB 540 would not need to include the "in lieu of" language. SB 540 should be amended to make clear that the CAISO must comply with all California law, especially Section 345.5(b), in every function it performs and action it takes in the future.

2. SB 540 Releases the RO From Any Legal Duty to File Tariffs or Market Rules that Respect California's Laws.

California's increased vulnerability to the Trump FERC and to a Commerce Clause attack stems first from the "in lieu of" language in Section 2. Currently, California law and policy completely aligns with the CAISO's FERC-approved tariff. The CAISO, acting through its Governor-appointed board, is precluded by section 345.5(b) from proposing to FERC any tariff or rule change that would violate any provisions of state law. Today, the CAISO cannot propose market rules or tariffs that conflict with CA law because doing so would be violate the statutory duties owed by the not-for-profit corporation to the people of California and be remediable by the California Attorney General. See Corporations Code section 5250. This protection will be eliminated under proposed section 345.6 because the regional electricity market operator will no longer be a California corporation subject to the authority of the California Attorney General.

SB 540 substitutes the clear language and requirements of Section 345.5(b) with a list of "conditions" which the CAISO in its sole judgment finds "… have been or will be adopted by the [RO]." 345.6(b). But the conditions substituted for current CA law in the bill provide no protection against cost increases as the electricity market operator will no longer be required to minimize costs to California consumers as the CAISO must do today.

SB 540's new section 345.6(b)(1) requires only "corporate obligations" – not legally binding requirements, -- which a future board may change under Delaware law. The bill only includes a corporate commitment that the regional operator's governance documents must include a "corporate obligation to respect the authority of each state . . . to set its own procurement, environmental, reliability, and other public interest policies." Nowhere does SB 540 require that the regional operator include any *legal* obligation in its tariffs or market rules to respect actual state *laws.* Rather SB 540 provides only a hollow "corporate" acknowledgement to respect the authority of a state to set its own "policies."

First, a corporate governance document obligation does not constitute a binding or enforceable legal requirement to respect state policies.

Second, an acknowledgement of state authority to set its own policies is not the same as a requirement to propose or follow market rules that will comply with state laws – policies do not equal laws. SB 540 does not require the RO to ***file tariffs or market rules*** that "respect the state's authority to set policies" much less follow or at least be consistent with state ***laws***.

Third, the regional operator can put any corporate obligation into its governance documents but FERC can ignore that corporate document – or can require the regional operator to change its corporate documents to obtain FERC approval to run the regional electricity markets. FERC could issue any requirement to change the corporate documents AFTER the CAISO votes to use the regional market.

SB 540's proponents' claims that foundational California energy programs – integrated resource planning (IRP), resource adequacy (RA), renewable portfolio standard (RPS), reduced carbon energy supply (SB 100) – can be protected through corporate document governance obligations. Those claims are speculative at best, especially in the

absence of enforceable standards and a mechanism for enforcing them in the bill. Only through incorporation under California law can Californians be assured that the corporate commitments are real and enforceable by the California Attorney General.

3. **SB 540 Exempts the CAISO from California Law If it Decides to Run the Markets Instead of Using the RO.**

SB 540's March 24th amendments make things worse – because the amendments anticipate that CAISO could decide to continue to run the regional electricity markets but without complying with California law in Section 34.5.5(b). But if the CAISO decides to run the markets ***SB 540 allows the CAISO to also not follow current California law,*** through the reference to the "in lieu of" language in 345.6(a).

> New subsection 345.6(d)(3) exempts the CAISO from following California law if it chooses to continue running the markets: "Except as provided in subdivision (a) with respect to managing energy markets as provided in this section, this section does not change the responsibilities of the Independent System Operator under Section 345.5,"
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> SB 540's exemption of CAISO from following California law is repeated in 345.6(a)(10) which allows the CAISO to continue to operate the markets, but only under the new RO's rules: "The Independent System Operator continues to operate the energy markets, subject to the market rules determined by the independent regional organization as accepted by the Federal Energy Regulatory Commission."

So SB 540 allows the CAISO to either cede the running of electricity markets to the new RO, which the bill exempts from following CA law, OR the CAISO can choose to continue to run the electricity markets. SB 540 newly exempts the CAISO from following Section 345.5(b) as well, setting a dangerous new precedent of exempting a California corporation performing an essential function from key California consumer, health and environmental protections. At the least, the language in SB 540 raises the inference that the CAISO is exempted from current California law – without providing any rationale for the Legislature to allow the CAISO to run the electricity markets without following current California law.

4. SB 540 Transfers CAISO's Current Section 205 Filing Rights to the New RO, Even IF CAISO Chooses to Continue to Run All the Electricity Markets.

SB 540's expanded vulnerability to the Trump FERC also stems from the transfer of the CAISO's legal authority under Section 205 of the Federal Power Act to establish the rates, rules and regulations ("market rules") and to control the process for changing or reforming all the market rules. SB 540 allows the transfer of CASIO's Section 205 authority to the RO, as detailed in the Pathways documents and the CAISO's delegation of the exercise of its Section 205 rights to a self-selected group, the Western Energy Market Governing Board. This delegation deprives California of its most important tool for correcting mistakes or protecting California's consumers from price increases or market rules that conflict with California's health and safety and environmental laws.

The surrender of section 205 rights makes California vulnerable to unwelcome changes of policy or circumstance by the RO or, for example, by a Trump mandate to

subsidize the purchase of coal-fired electricity in regional markets that contain coal resources. The CAISO market footprint currently contains no coal resources; expanding the market even just to Nevada opens our markets to forthcoming Trump mandates to subsidize coal-fired power in markets where coal-fired power plants are located.

Only by including in SB 540 an explicit requirement that the RO files and obtains FERC approval of tariffs that explicitly protect California's laws and climate programs prior to the CAISO choosing to "use" the RO's markets , can Californians be assured that their laws and policies will not change.

SB 540 proponents claim that CAISO will continue to operate markets, and that only governance of market rules will be transferred to the RO.[3] But SB 540 does not distinguish "market rules" that transfer to the RO from "operations" that do not transfer and remain with CAISO. The text of SB 540 is silent about which market "operations" will transfer to the RO and which will remain with the CAISO. The inclusion of merely a corporate governance document obligation and the complete omission of any FERC approval invites *Hughes v. Talen*-style federal pre-emption,[4] because each of the RO's policies may be found to be "tethered" in some way to the FERC-jurisdictional wholesale market. ***Only after the RO files all of its tariffs and only after the RO's tariffs are approved by FERC can California make an informed decision whether to "use" the RO's markets.*** Delegating the authority to the CAISO to make the decision before any tariffs are filed invites a bait-and-switch by the RO – or by the FERC, with FERC changing the RO's tariffs, which under SB 540 could occur after the CAISO decides to use the RO's markets.

A report prepared for the Energy Commission[5] and released just prior to introduction of SB 540, and prior to the Trump Executive Orders outlines some of the problems that California may face. The *Brattle Study predicts a net increase in GHG emissions throughout the West,* and shows that any incremental supplies for California would be obtained primarily from coal- and gas-fired generation. It shows negligible economic benefits for the West as a whole, with very little if any for California.

The loose and ambiguous drafting of proposed section 345.6 and the legal uncertainties created by the interaction between section 345.6 and the operation of the

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[3] The meaning of the euphemism "governance" is revealed in the Pathways documents. Pathways Launch Committee, Step 2 Final Proposal, page 4, bullet 4 (November 15, 2024) https://www.westernenergyboard.org/wp-content/uploads/Pathways-Initiative-Step-2-Final-Proposal.pdf

[4] *Hughes v. Talen Energy Marketing LLC*, 578 US 150 (2016)

[5] "Preliminary Day-Ahead Markets Impact Study," Presentation 1/24/25 https://www.energy.ca.gov/event/workshop/2025-01/iepr-commissioner-workshop-regional-electricity-markets-and-coordination ("Brattle Study") This study forecasts energy flows (sources and sinks) and estimated production costs under the EDAM, a new experimental market proposed by the CAISO that will actually begin operation in 2026. The study was undertaken before the Trump Executive Orders promoting fossil fuels, attacking California's climate policies, and – crucially –ending FERC's independence from administration policies

Federal Power Act, render SB 540's checklist of process safeguards illusory, ineffective and unenforceable. For example, SB 540 would end California's ability to course-correct in the electricity markets if the Brattle Study's forecasts of increased CO2 emissions materialize. SB 540 replaces the consumer, public health and environmental protections currently required by state law with suggestions, meaningless process and corporate governance documents, "assurances" that provide no legal or binding effect.

5. Inadequate Withdrawal Requirements -- The "Hotel California" Problem

SB 540 proponents claim that the March 24th amendments allow the CAISO and California utilities to withdraw "unilaterally" from the RO's "voluntary" markets and revert to some version of the current status quo if calamitous results occur. The bill provides that the RO's corporate documents (but not its FERC-approved tariffs) must provide a procedure for unilateral withdrawal "without any further approvals." Pub. Util. Code section 345.6(a)(12). The new language conflicts with federal law because no legal basis for unilateral withdrawal from a FERC-jurisdictional organized regional market is possible. Any such change of control requires an order from FERC and satisfaction of all related contractual arrangements, as determined by FERC, pursuant to the Federal Power Act, sections 203 and 205. See also, *Louisville Gas and Elec. v. FERC*, 988 F.3d 841 (6th Cir. 2021). Even moving from one organized market to another (the *LG&E* fact pattern) can take over a decade and involve extraordinary costs and extended litigation (the *LG&E* case began in 2006 with a filing at FERC to withdraw.)

SB 540's language that the RO must allow (presumably in its corporate documents because SB 540 does not require the RO's tariffs to include withdrawal approval) for "unilateral withdrawal" "without any further approvals" fails to provide the necessary protections from FERC changing the RO's process as it likes. SB 540 should be amended to set explicit prohibitions – in both the RO's tariffs and through FERC pre-approval of those tariffs – on assessing any costs to California entities that seek withdrawal – and prohibiting the imposition of any conditions on withdrawal. The promise of easy withdrawal made by SB 540's proponents must be backed up by enforceable tariff and FERC pre-approval language. Even then, California may not be protected because a future FERC could decide to change a prior FERC's order, citing a change in circumstances, fact or law.

The State of Connecticut, sought a legal opinion from a Harvard law professor about how it could withdraw from its RTO. That 2020 opinion concludes that it would be extraordinarily hard for Connecticut to withdraw from NE ISO because FERC could block any withdrawal, especially if any other RTO participant opposed Connecticut leaving. "FERC could block withdrawal, and it might be more inclined to do so in response to a protest filed by an ISO-NE transmission owner."[6]

6. California Already Accesses the Broad Western Market Through Today's CAISO Market Operations.

Proponents claim that surrendering California's authority and incurring the severe environmental damage predicted by the Brattle Study provides California with broader

[6] See https://eelp.law.harvard.edu/wp-content/uploads/2024/10/ISONexit-Memo.pdf.

access to regional energy supplies and larger regional markets for exporting our local energy. Proponents claim that a broader market might help California gain control over runaway electricity prices. Proponents cite to the zero cost of producing renewable energy, once built, to claim that renewable energy will be cheaper in a regional market, and thus will be used to a greater extent in a regional market than in CAISO markets that operate today. But California already has physical (through existing transmission) and commercial (both bi-lateral and multi-lateral contracts) access to energy supplies throughout the West and Canada. California already participates in the Western Electricity Coordinating Council, where CAISO buys and sells electricity throughout the West without the need for an expanded regional market. As the Brattle Study concludes on pages 8 through 10, the "incremental supplies" that would be available in a regional market will come from coal and gas-fired electricity.

Whether those out-of-state supplies will be priced affordably or provide any cost savings to California consumers depends on the bidding and pricing strategies of sellers, who are paid the highest price set by the CAISO algorithms regardless of their bids, and regardless of their costs. The single price auction mechanism used by the CAISO and all other regional electricity markets creates a black hole of uncertainty for predicting future electricity market prices. The proponents rely on the Brattle Study's purported cost savings, which do not begin until 2032. But the Brattle Study inaccurately modeled future market prices by basing those prices on "power plant production costs" and not the single price auction mechanism that actually sets electricity prices in the CAISO's and other regional electricity markets.

Proponents claim a second environmental benefit of avoided curtailments of California solar and wind generation through regional sales. But the Brattle Study concludes that under the most likely expanded markets scenario, California's solar and wind curtailment is not lessened. The rapid scaling up of storage in California, including battery storage and vehicle-based storage, and optimizing pumped storage and local hydroelectric resources, provide better approaches to managing California's solar surpluses than chasing below-cost or negative-priced sales.

If the broader interstate market creates opportunities to build renewable facilities out-of-state to import power, California loses local jobs and economic development. Every study of the economic impact of the prior "regionalization efforts" has demonstrated significant job loss and economic damage. If the Pathways proposal changes the prior job loss conclusions, then a new and independent study demonstrating SB 540's effect on California jobs should be conducted.

7. SB 540 Makes California More Vulnerable to Trump Administration Harmful Actions and Executive Orders.

Although the March 24th amendments to SB 540 declare the intention to preserve California's Renewable Portfolio Standard (RPS) and its commitment to connection to the local grid, that declaration alone is legally inadequate to achieve that result. Proponents recognize that SB 540 in its current form makes California's RPS laws vulnerable to a Commerce Clause attack as they continue to draft amendments to try to "fix" the problem.

Compounding California's clean energy transition challenges is the uncertainty over what the FERC will do to California once the Trump Administration obtains majority control of the Commission. The current FERC Chair, Mark Christie, is a holdover from the first Trump Administration and his term ends this summer. No one knows if he will be replaced and if so, who will lead FERC. Currently, the FERC has three Democratic commissioners, who will rotate off the FERC after 2026. California should wait to move forward with any changes to our electricity markets or to the CAISO's legal authority and mandate to comply with California law until we know who will control FERC and what the Trump-majority FERC will require.

Most importantly, the Trump Executive Orders on April 8, 2025 inject another enormous layer of uncertainty and risk to any change to California's legal control. As Scientific American reported on April 9, 2025, "President Donald Trump on Tuesday made an unprecedented peacetime intervention in the electricity sector, using executive orders to force aging coal-burning plants to stay open and feed soaring energy demand from American tech companies." . . . . "they direct Secretary of Energy Chris Wright to identify which regions are at risk of electricity shortages and bar the shutdowns of coal plants deemed essential."[7] DOE Secretary Wright's review of what coal generation is needed and where is due 90 days from April 8th. That Executive Order directs DOE Secretary Wright to develop a process within 90 days for issuing emergency orders to keep power plants operating in areas of the country deemed to have potential grid reliability problems.

California will not know what the DOE Secretary will order for markets with coal-fired power plants until at least July. But we know now that coal-fired power plants are located in other states, including Nevada, Idaho, Montana, Wyoming, Utah and Colorado.

Another April 8th Trump Executive Order "directs Attorney General Pam Bondi to take legal action to stop the enforcement of state and local laws and regulations that address "climate change" or involving "environmental, social, and governance" and "greenhouse gas" emissions."[8] That Executive Order directs the Justice Department to investigate states that are discriminating against coal.

The extraordinary scope of both the April and the prior January and February Executive Orders, which declared an "energy emergency" giving the President expanded powers and directing independent agencies, like the FERC, to obtain White House approval for all new regulations and orders amplify the uncertainty of what shoe will drop next and what vulnerability will California face –even by this summer. Given all the change that is in the works, now is not the time to create a broad new precedent that California's electricity markets need not comply with California's public health or environmental laws or reduce costs to the maximum extent possible.

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[7] Scientific American April 9, 2025, https://www.scientificamerican.com/article/trumps-executive-orders-on-coal-call-for-more-mining-and-weakening-pollution/

[8] Scientific American April 9, 2025, https://www.scientificamerican.com/article/trumps-executive-orders-on-coal-call-for-more-mining-and-weakening-pollution/

At the very least, the provisions of SB 540 that give the CAISO board the ability to abrogate the protections of current California law merely by adopting a resolution in 2027 should be stricken. Any final decision to "use" regional energy markets or to annul the statutory protections provided by Section 345.5(b) should be brought back to the Legislature for a vote in 2027, after we know what actions the Trump FERC, the Trump DOE Secretary and the Trump Attorney General will take.

Please VOTE NO on SB 540.

/s/ /s/

Loretta Lynch Bill Julian

Cc: Committee Members

CAISO will answer to the RO, a Delaware Corp, side-stepping CA's legal mandates to reduce costs & maximize electricity for CA

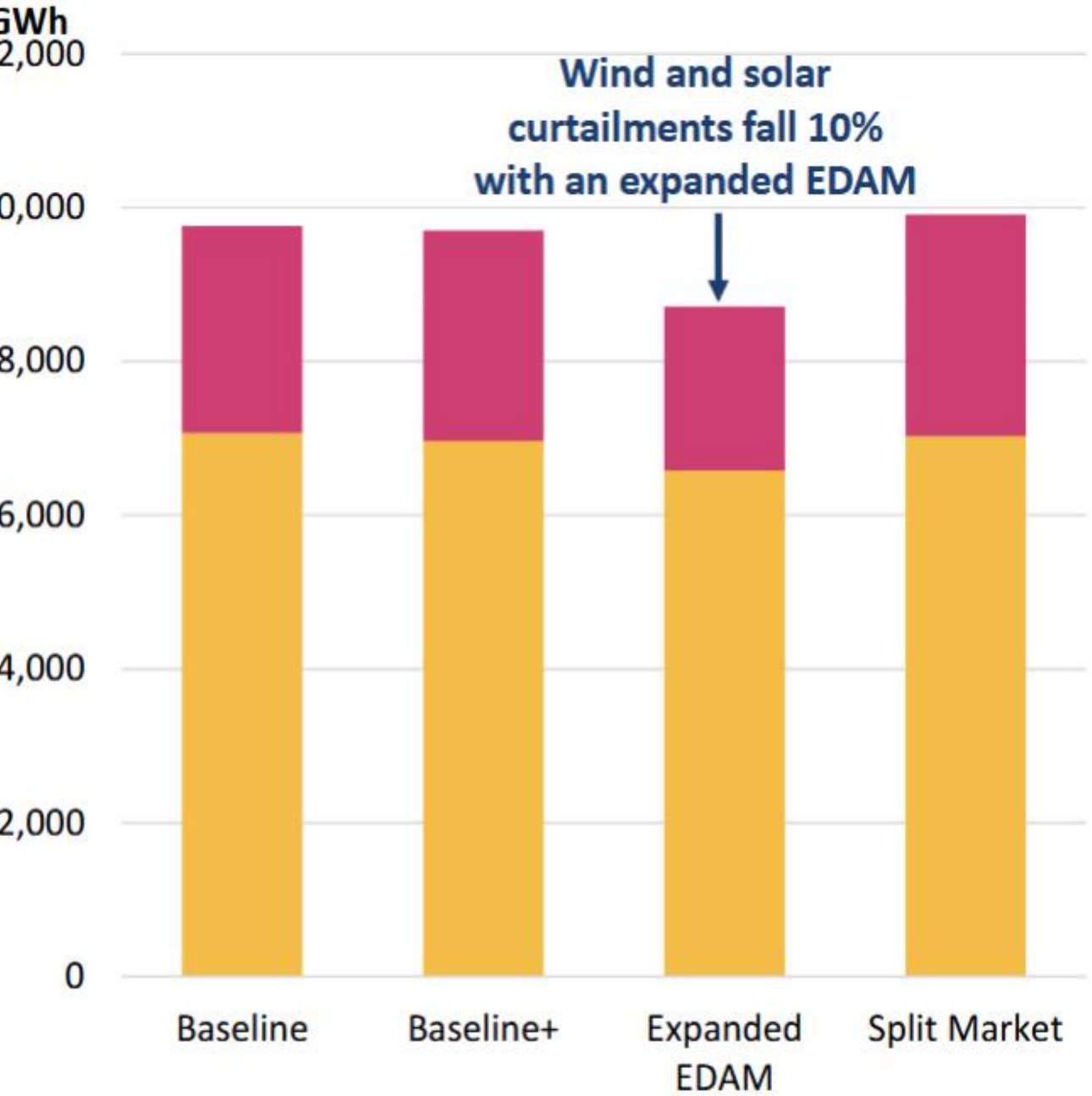
SB 540 allows CAISO in 2027 to give away all decision-making power over CA's electricity markets & grid operation rules & eviscerates the legal protections that CA won in Court.

- CAISO's Board can "**use energy markets** governed by an independent regional organization" "**In lieu of** the Independent System Operator managing related energy markets **as provided in subdivision (b) of Section 345.5**" (sec. 345.6(a) of SB 540) No legal meaning to "use energy markets."
- "**In lieu of**" **means that CAISO can choose to NOT FOLLOW the requirements of Sec. 345.5 (b)** to:
  - **"Reduc[e] . . . overall economic cost to the state's consumers"** (b)(2) & "**minimize cost impact on ratepayers**. . . ."(b)(5)
  - To comply with "Applicable state law intended to protect the public's health and the environment." (b)(3)
  - "**Maximizing availability** of existing electricity generation resources **necessary to meet the needs of the state's electricity consumers**." (b)(4)

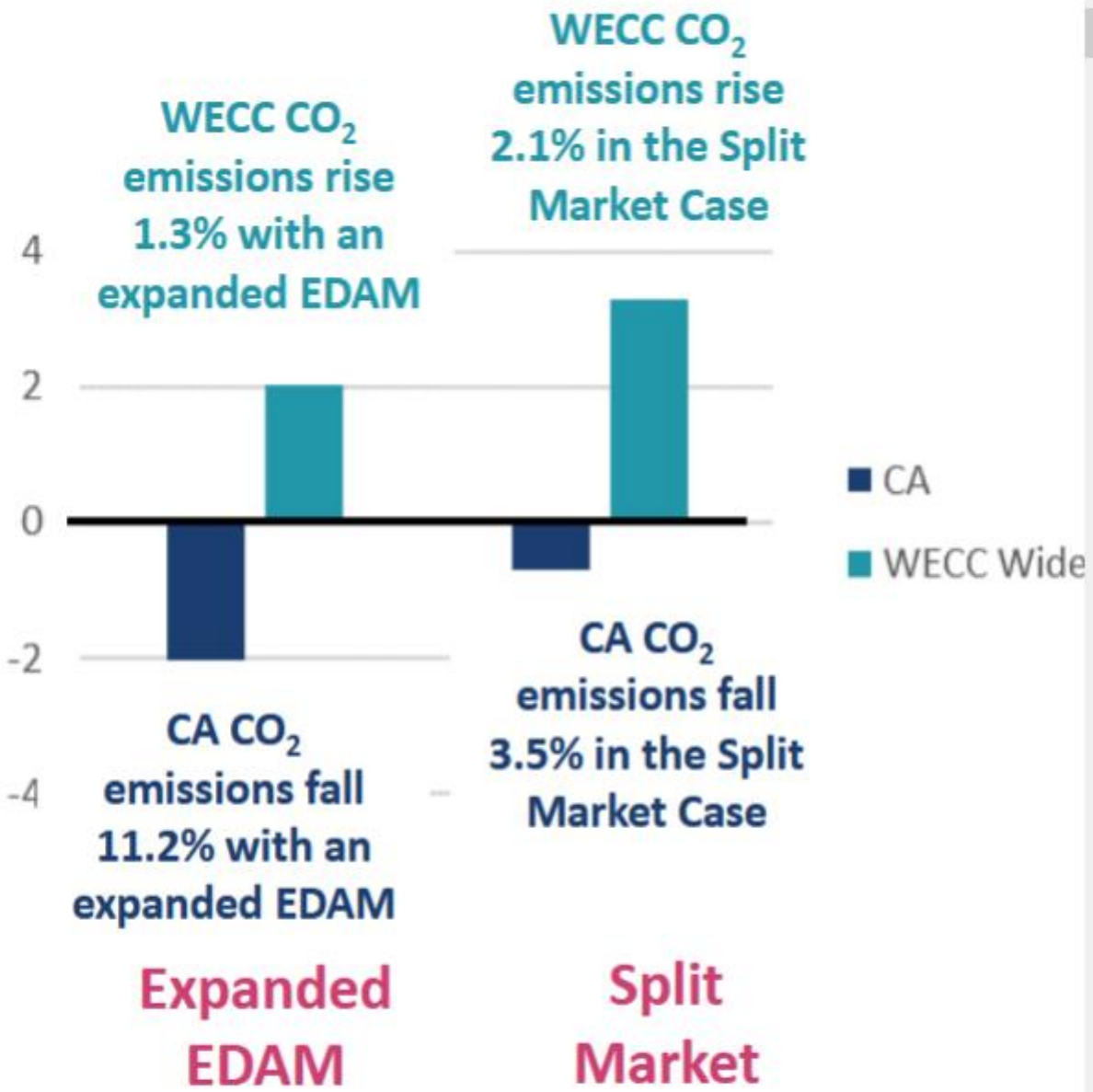
Source Data:

- *Pathways, https://www.caiso.com/documents/briefing-on-west-wide-pathways-initiative-step-2-initiative-presentation-sep-2024.pdf*

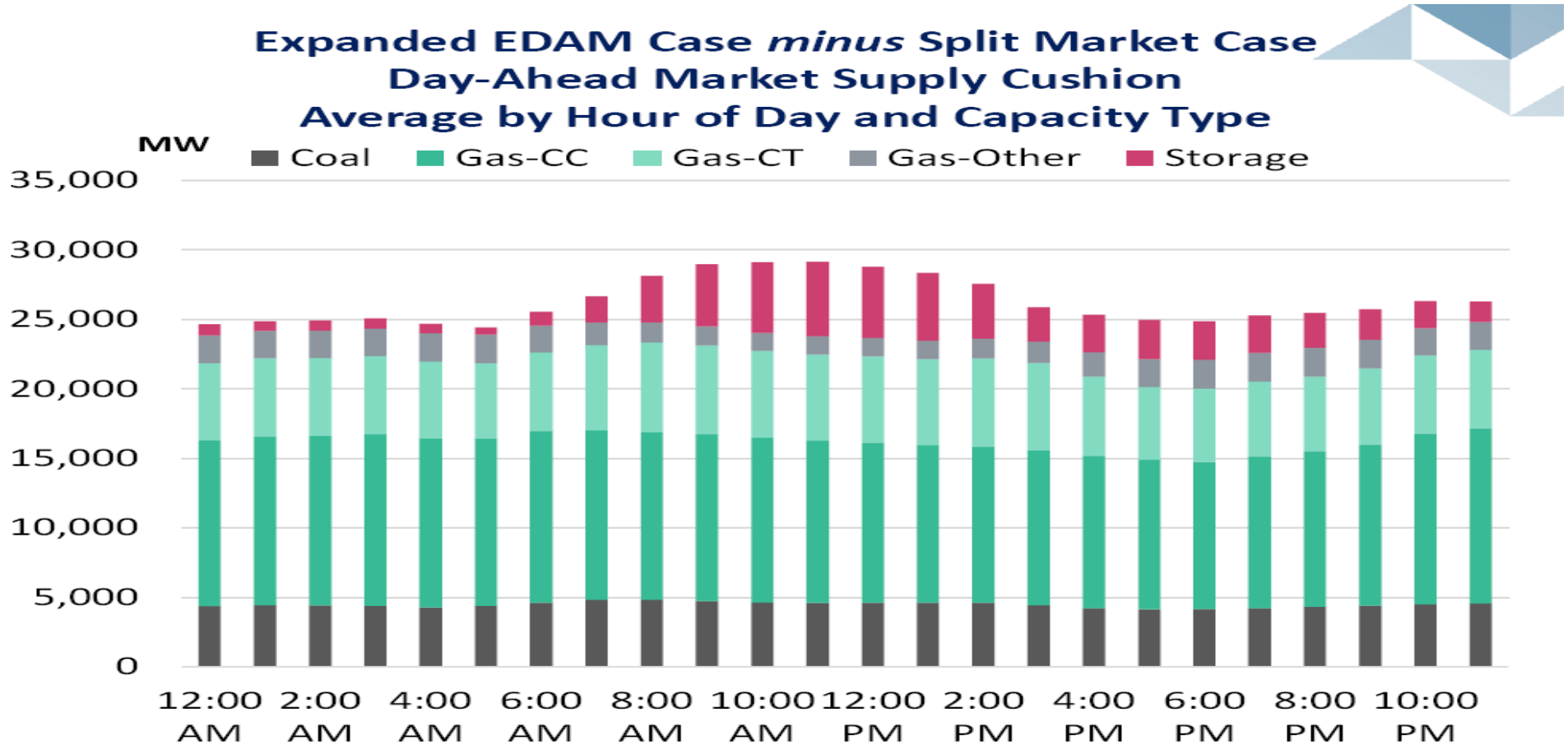
Total California Curtailments by Case



Change in CO_2 Emissions



Brattle Group Study Shows that Any Added Market "Reliability" Comes From Out-of-State Coal and Gas Plants



- The supply cushion is ~25,000 MW more in the Extended EDAM case than the Split Market case.

Berkshire Hathaway Coal + Fossil Assets Pervade the West

PacifiCorp
- Pacific Power
- Rocky Mountain Power

MidAmerican Energy Company
- NV Energy
- Northern Powergrid

BHE Transmission
- AltaLink
- BHE U.S. Transmission

BHE Pipeline Group

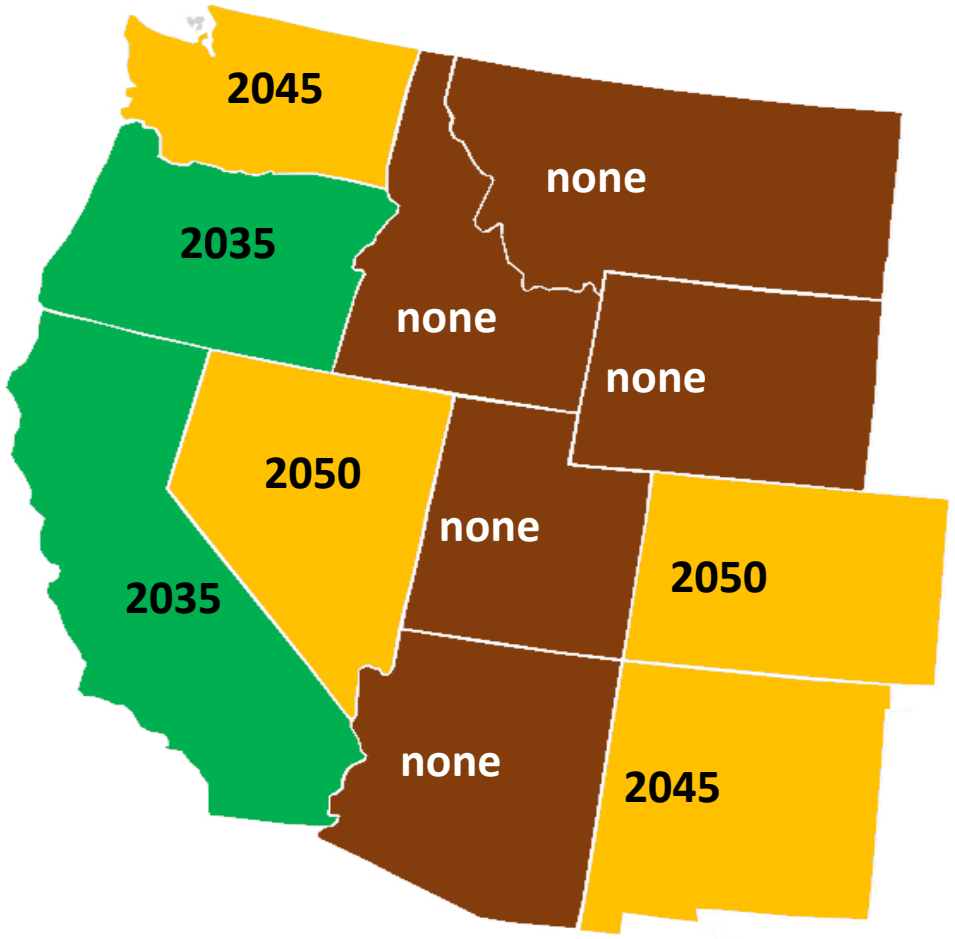
BHE Renewables

- Coal-Fired Generators

Source Data:
- *Berkshire Hathaway Energy, https://theenergycouncil.org/wp-content/uploads/2023/01/Scott-Thon.Berkshire-Hathaway-Energy-Transition-Panel-Dec-22.pdf*
- *U.S. Energy Information Administration, https://atlas.eia.gov/apps/coal/explore*

SB 540 Yolks CA to Other Western States That Do Not Share California's Ambitious Climate Goals

100% and 90% Carbon Free Electricity Targets



Clean Electricity Target Dates		
State	Target Date 90% Clean	Target Date 100% Clean
WA	none	2045
ID	none	none
OR	2035	2040
MT	none	none
CA	2035	2045
NM	none	2045
CO	none	2050
NV	none	2050
AZ	none	none
WY	none	none
UT	none	none

Source Data:
Clean Energy States Alliance, https://www.cesa.org/projects/100-clean-energy-collaborative/
Filing a State Climate Action Plan as required to receive IRA federal grant funding does not equal making a commitment to clean electricity.. WY, ID & UT have no Climate Action Plan. Whatsoever.

California Buys & Sell Electricity Throughout the West Without Ceding Power to a Regional Operator

A Regional Market Operator is Not Needed for CA to Access Out-Of-State Renewable Energy

- Power is bought & sold across the western United States throughout the Western Electric Coordinating Council (WECC) region. California has participated in WECC for decades & trades power throughout the WECC daily.

- California owns significant out of state electricity resources & maintains long-term contracts to buy substantial power in AZ, NM, the Northwest & other states.

- California already obtains renewable energy through bilateral agreements, ownership rights & CAISO's market without compromising state authority.

Western Transmission – Existing Paths

Source Data:

- *WECC 2024 Path Rating Catalog—Public Version, https://www.wecc.org/sites/default/files/documents/meeting/2024/2024%20Path%20Rating%20Catalog%20Public_v2.pdf*

To: VCEA Board Members and Alternates

From: Bill Julian

I would like to request a discussion of Item 6, Legislative Report, and specifically SB 540 (Becker and Stern), the so-called Pathways proposal to eliminate consumer and public protections put in place in the early 2000's to require accountability from the California grid operator, the CAISO, to quell the Energy Crisis. Specifically, the bill permits the CAISO to "use markets" created through a third-party entity "in lieu of" specific statutory obligations to the people of California to minimize costs, protect the public health and well-being, and maintain reliable affordable electric service. Further, the bill removes from the CAISO crucial powers it now has to interact with the Federal Energy Regulatory Commission (FERC) to effectuate regulatory reforms and protections if needed. The legal protections which Pathways seeks to abrogate were sustained in the courts against challenges by FERC and the Pathways proponents twenty years ago; the Pathways bill undermines these hard-won legal protections.

The VCEA Board has not taken a position on this bill but CalCCA is a prominent supporter, an unfortunate mistake that misrepresents VCEA and our community that you VCEA Board Members represent. After the discussion I am asking the VCEA Board to take an opposed position. This is not the time to be moving into uncharted legal and policy waters. I have spoken with several Board members and Mr. Sears previously about having a debate at the CalCCA annual meeting on this subject, to no avail.

A recent study of a new and untested approach to grid management by the CAISO, the Extended Day Ahead Market (EDAM) -- prepared for the Energy Commission before the Trump Executive Orders on promoting coal and attacking California cap-and-trade were issued -- shows that if the new market is implemented next year as proposed, there will likely be a net increase in emissions in the West and that hoped-for reliability resource increments will be almost entirely coal- and gas-fired generation. The Pathways bill, if enacted this year before the EDAM goes live, will make it virtually impossible to course correct if the dire CEC forecast proves correct, because it will enable the current CAISO board to give away its powers under the Federal Power Act. With the added uncertainty of the Trump policies, this is not the time to give up hard-won state powers and protections.

This is an extremely complex legal and policy discussion. A detailed examination of SB 540 will demonstrate that it undermines California's renewable portfolio standard (RPS); it undermines our commitment to carbon reduction programs, including VCEA's commitment to clean energy; it renders much more difficult our efforts to get control of

retail electric rates driven in part by the CAISO's (and FERC's) approach to price formation in wholesale energy markets (the single price auction and scarcity pricing). The risks are great; the promised reward – increased access to wholesale energy elsewhere in the West – is illusory because we already have access (both physical and commercial) to regional energy supplies and have had for sixty years. We gain nothing and lose a lot if Pathways moves forward.

Valley Clean Energy is facing many challenges, mostly stemming from the current CPUC's policies on "resource adequacy" and its war on distributed energy resources (DERs) and rooftop solar. The Pathways proposal and its underlying assumption that CA should go big – that we should get in bed with the hedge funds and Enron offspring – is not the answer to these challenges.

Let's have the discussion and move forward. SB 540 has not been set for hearing in the first policy committee; it is doubled-referred in the Senate (Energy and Judiciary) so there is time to have a robust discussion and take a reasoned decision.

VCEA should stand up.

April 9, 2025