



March 12, 2025

Re: Pathways (SB 540) Gives Trump's FERC Power To Invalidate The Renewable Portfolio Standard And Other California Environmental Laws

Dear California Senator,

You will soon be asked to take a vote to hand the power over California environmental laws to the Federal Energy Regulatory Commission (FERC) at grave risk to California's renewable portfolio standard (RPS) and other clean energy laws.

The sovereignty issues that have doomed the Western Regional Transmission Organization (RTO)/Pathways, and prevented it from becoming law, have not gone away, in fact they have become more perilous following the presidential election.

What has happened is the need for more power due to the inexhaustible hunger of data centers to power AI has caused some people to conveniently forget the Achilles heel of Pathways.

Pathways proponents claim that California needs more power and more renewable electricity, and that a Delaware corporation operating regional electricity markets will make that happen. The problem is that the Delaware company will be entirely subject to FERC's rules, a FERC with Donald Trump's appointees on it, not California's.

Changing California law and statutory requirements to allow a regional market operator that will be a Delaware corporation eliminates all the protections that *ISO v. FERC* provides California to require the market operator to follow California law and propose market rules that follow California law. (*ISO v. FERC*, 372 F.3d 396 (D.C. Cir. 2004).)

California is now shielded from any challenge to its authority over the board of CA's market operator, CAISO, because it is a California corporation. California cannot be forced to violate California's environmental laws. That protection vanishes if California cedes its authority to a Delaware corporation that runs the regional market.

Under Pathways as envisioned in SB 540, the CAISO remains the transmission grid operator, but it will transfer its right to propose tariffs (the rules for how the markets and the transmission grid operate, called Section 205 filing rights) to a Delaware (DE) corporation, called a Regional Operator (RO). The Delaware RO will control all the tariffs dictating how all electricity markets operate **AND** how California runs its grid. California would give up its right to demand that its environmental, consumer and health safety laws be followed.

- **California's laws** (P.U.Code §345.5(b)) requiring CAISO to run CA's electricity markets and California's grid consistent with the interests of the people of CA and **to minimize prices and maximize supply for CA consumers will be made inoperative.**
- **Pathways allows the Trump Administration to require CA to buy coal-fired electricity.** It will allow Trump to require CA (and the entire regional market) to subsidize the purchase of coal-fired power throughout the West. If Trump requires coal subsidies in regional markets, as he promised and started to do in 2018, California will be required to buy and use electricity made from coal.
- **Pathways creates the risk that the DE regional corporation will block the development or expanded use of distributed energy resources in CA.** The DE RO could file tariff rules that hurt CA's development of distributed clean power, and instead promote coal, nuclear and fossil resources. The regional operator could require CA help pay for transmission lines in other states in the regional market that support coal and nuclear power plants or are costly and unneeded. In January 2025, PacifiCorp reneged on its promise to shut down its Utah coal plants. California could be required to subsidize their coal power instead of developing its own clean power.
- **Pathways risks invalidating CA's landmark Renewable Portfolio Standard (RPS) laws:** Any market participant or prospective market participant, such as a coal plant owner, can challenge California's RPS, which sets targets for California's clean energy goals, as a violation of the Interstate Commerce Law and invalidate the RPS law. Changing our California-only electricity market to a multi-state market makes us vulnerable to lawsuits claiming that our RPS law violates interstate commerce. Even if all the utilities or states joining the regional market operator agreed that California laws, as well as policies, would remain effective, any company could still sue California to invalidate the RPS.

The California Senate Judiciary Committee [analysis](#) of a similar proposal from 2018 sums up the problems: "This change in governance would place control over California's energy market in the hands of a Western states RTO heavily dominated by coal interests (the largest coal-producing states in the U.S.) and under the direction of the Trump administration. California's policies for transitioning to renewable energy—and initiatives to develop distributed or decentralized energy resources—would be subject to review and revision by a market authority that is not interested in either."

Bottom line, Pathway makes California more vulnerable to the Trump FERC and provides the best opportunity for Trump to hold California over a barrel or hurt our economy and consumers.

If California's renewal portfolio standard is invalidated, this is a vote you will be remembered for. It should not be taken lightly. Many of the generation of legislators who voted for electricity deregulation regretted it and it haunted many. Consumer Watchdog is calling on every Senator who votes for the Pathways plan to take a pledge to resign from public office if the renewable portfolio standard is invalidated under a legal challenge made because of Pathways. Had those deregulation legislators had to make a similar vow, California would have avoided a huge disaster.

Many of the same forces that advocated California's deregulation law are aligned to enact Pathways. The IBEW unions, after dire warning about sovereignty issues in 2023, are now on board. This follows a huge boon to IBEW electricians nationally to staff data center and new contracts for the union from PacifiCorp, a principal backer of the Western grid. NRDC, another principal backer of the deregulation law, has been a driving force for Pathways. Ralph Cavanagh, an NRDC attorney, was the chief booster of the Western power trading market. He famously said in 1997, "Can you trust Enron? On stewardship issues and public benefit issues...the answer is, yes."

Western power trading and arbitraging comes with its own risks that California has rightly steered away from after its deregulation disaster. Trump poses the ultimate challenge. The question remains to you: "Can you trust Trump's FERC with our environmental laws?" If the answer is no, you need to vote against Pathways. If you vote for it, you should do it soberly with a pledge to resign from public office if our environmental laws are invalidated. You are making a bet on California's green energy future.

The electricity deregulation law passed unanimously under the same conspiracy of silence and self-interest that Pathways seems to be greased with. Consumer Watchdog sponsored a ballot measure in 1998 to do away with the worst parts of the deregulation effort, paying the stranded assets that wound up on our electricity bills for 30 years. Prop 9 failed because of utility opposition, but we were right about the impact of deregulation. Markets that are unfettered will eat the consumer and our environmental laws too.

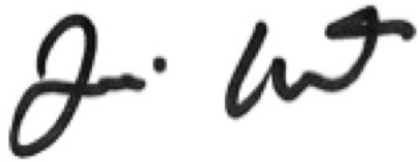
Consumer Watchdog asked to participate in the Senate Energy Committee information hearing on Pathways on March 12th, but was denied a seat on a panel, despite being one of the only dissenting voices to the utility/Big Energy establishment. The backers of SB 540 don't want you to know its real motto: "More Power For AI, Hell With Climate Change."

The so-called "guardrails" in the SB 540 proposal are not safeguards. Even if CAISO remains the balancing authority, the Delaware corporation will hold all the cards and possess the authority to make the rules for both the markets and the transmission grid, solely subject to FERC's jurisdiction. The idea that a statement of corporate governance saying that the DE RO will respect California's right to set policies will be binding on the RO or prevent market participants who want to challenge California's environmental laws is laughable. Giving CAISO the power to pull the trigger in 2027 is only delaying the inevitable — CAISO and its free market appointees

are big backers of Pathways. And no exit ramp exists if this experiment goes bad – the new Regional Operator – with the Trump FERC -- will decide whether California can leave the new unproven system, and how much it will cost California consumers to end the failed experiment. Moreover, Pathways is not needed to get California more power from the West. California already buys and sells electricity through the West without ceding power to a regional operator.

Be warned: Pathways may be the most dangerous vote you will ever take in the state Capitol.

Sincerely,



Jamie Court
President, Consumer Watchdog
(310) 874-9989

