



## ESSAY

# California, an Island?

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## Introduction

California holds the keys. What will it do with them?

To say the future of the West hangs in the balance might lilt toward hyperbole. To acknowledge, however, that what happens over the next two years may reshape the region's infrastructure, industry, and resilience for the remainder of this century rightly highlights an underrecognized truth.

For decades, the American West has lagged the rest of the nation in developing organized electricity markets.<sup>1</sup> In almost every other part of the country, the federal government has certified these regional transmission organizations (RTOs) and independent system operators (ISOs) to dispatch the grid, facilitate cost-efficient electricity trades, and ensure that energy is reliably

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1. See Stephanie Lenhart, Natalie Nelson-Marsh, Elizabeth J. Wilson, & David Solan, *Electricity Governance and the Western Energy Imbalance Market in the United States: The Necessity of Interorganizational Collaboration*, 19 ENERGY RSCH. & SOC. SCI. 94, 102 (2016).

delivered to homes and businesses.<sup>2</sup> Increasingly, these organizations also carry importance in the nation's energy transition.<sup>3</sup>

In the West, only California is home to such an entity: the California Independent System Operator (Cal ISO or CAISO).<sup>4</sup> Prior efforts—there have been many—to grow a regional western electricity market, including by expanding CAISO, have failed.<sup>5</sup>

Now the world is different. Climate change and poor planning have made clear the West's precarious energy position, with wildfire-induced blackouts, regionwide heatwaves, and touch-and-go reservoir levels punctuating the point.<sup>6</sup> Colorado and Nevada have adopted legislation mandating that their utilities join an RTO or something like it.<sup>7</sup> Since 2014, Cal ISO has run a successful day-of spot energy market, with more and more western power players joining each year, yielding nearly \$5.5 billion in benefits to date.<sup>8</sup> Meanwhile, massive amounts of renewables stand in the queue, waiting to be connected to the grid.<sup>9</sup> And, perhaps most importantly, there are, right now, squarely on the table two competing proposals to regionalize the West's electricity system.<sup>10</sup>

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2. *Electric Power Markets*, FED. ENERGY REG. COMM'N (May 16, 2023), <https://perma.cc/KX54-G5BX>.
3. See Alexandra Klass, Joshua Macey, Shelley Welton, & Hannah Wiseman, *Grid Reliability Through Clean Energy*, 74 STAN. L. REV. 969, 1057–70 (2022).
4. *Electric Power Markets*, *supra* note 2; see *History*, CAL. ISO, <https://perma.cc/2WNK-C2GE> (last visited June 24, 2024).
5. See Angela Cifor, Paul Denholm, Erik Ela, Bri-Mathias Hodge, & Adam Reed, *The Policy and Institutional Challenges of Grid Integration of Renewable Energy in the Western United States*, 33 UTILS. POL'Y 34, 38–39 (2015).
6. See Amy L. Stein, *Energy Emergencies*, 115 NW. U. L. REV. 799, 849 (2020); Joshua C. Macey, Shelley Welton, & Hannah Wiseman, *Grid Reliability in the Electric Era*, 41 YALE J. ON REGUL. 164, 168 (2024); Northwest Power and Conservation Council, Pacific Northwest Power Supply Adequacy Assessment for 2027, 17 (2024), <https://perma.cc/JW3L-XCR7>.
7. NEV. REV. STAT. § 704.79886 (2023); CO. REV. STAT. § 40-5-108(2)(a)(I) (2023).
8. *Benefits*, W. ENERGY IMBALANCE MKT., <https://perma.cc/E6Z5-4SN3> (Apr. 30, 2024).
9. Emma Penrod, *US Grid Interconnection Backlog Jumps 40%, with Wait Times Expected to Grow as IRA Spurs More Renewables*, UTIL. DIVE (Apr. 11, 2023), <https://perma.cc/NHM2-MH3K>.
10. Both the California ISO and the Southwest Power Pool (SPP) are seeking to attract parties to their two different day-ahead western wholesale electricity markets. These markets in turn may lay a foundation for a western RTO or RTOs. SPP, in fact, expressly plans to create a western RTO. CAISO's market is called EDAM, or the Extended Day-Ahead Market, and SPP has denominated its proposal Markets+. See *EDAM*, CAL. ISO, <https://perma.cc/A5KW-WQDG> (last visited June 24, 2024); *Markets+*, SW. POWER POOL, <https://perma.cc/U7VP-TXD4> (last visited June 24, 2024); *RTO Expansion*, SW. POWER POOL, <https://perma.cc/GZK4-5F97> (last visited June 24, 2024).

In one proposal, much if not all the West will start on a trajectory toward joining Cal ISO, creating a path to a single RTO that can leverage geography, resource diversity, and CAISO's longstanding expertise to introduce efficient trading, strengthen reliability, and nudge the West closer to a sustainable electricity grid.<sup>11</sup> In the other, the West will fragment into two different electricity markets, with California becoming unnecessarily isolated—and a full-fledged west-wide RTO likely never forming.<sup>12</sup>

California controls the choice.

What it should do is clear: unlock the door to the first option. This will not just benefit the region. It will advantage California. Because if the West fractures into separate electricity regions, California will become far too isolated from an electricity perspective—if not an energy island, something far too close to it.

How to unlock this door is equally straightforward. Rather than follow past patterns of failed regionalization efforts through procedurally cumbersome and substantively elaborate legislation, California should pass a law declaring its intent to regionalize Cal ISO and committing that approval to expert agency judgment.

Part I of this article details the key barrier now in the way to western electricity market regionalization: CAISO's existing governance structure. Part II identifies why regionalizing is in California's—and the West's—best interest. Part III explains why prior objections to regionalizing CAISO no longer hold.

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11. Already, PacifiCorp, the largest investor-owned utility in the West outside of California in terms of customers, has committed to EDAM. Four other key players also have indicated their intent to join: the Balancing Area of Northern California, NV Energy, Portland General Electric, and Los Angeles Department of Water and Power. Idaho Power has signaled that it too is leaning toward joining EDAM. *See PacifiCorp Formally Commits to California ISO's EDAM*, PACIFICORP (Apr. 26, 2024), <https://perma.cc/EHF8-MHMJ>; Ethan Howland, *NV Energy Opts to Join CAISO-developed Day-ahead Market over SPP Alternative*, UTIL. DIVE (June 3, 2024), <https://perma.cc/PWX5-476K>.
12. If some parties ultimately align with CAISO and others with SPP, there will necessarily be two day-ahead markets in the West. Notably, the Bonneville Power Administration earlier in 2024 indicated it likely will join SPP's Markets+, though it recently announced it will delay its decision until 2025. Bonneville's choice to withdraw from Grid West, which encompassed much of the Northwest, in the early part of this century, was a driving factor in that failed predecessor organization's demise. *See With Directors' Vote, Ailing Grid West RTO is Now Grid Gone*, ELEC. J., May 2006, at 7, 7 ("The board of directors of the badly injured regional transmission organization for the Pacific Northwest—wounded by the refusal of the Bonneville Power Administration to support an organization it largely created—has announced that it will dissolve."); *see also U.S. NW Utilities Mothball Grid Operator Plans*, REUTERS (Mar. 5, 1998) (noting that Idaho Power declined to join the IndeGo proposal in part because BPA decided not to partner).

Part IV suggests the path forward, highlighting why breaking from past failed efforts is necessary today.

## I. Governance, Governance, Governance

Past reasons for the Cal ISO's failure to regionalize are shapeshifting, transmuting over time. At the turn of the century, the California energy crisis neutered talks of a west-wide RTO.<sup>13</sup> The distrust persists. In the wake of the 2020 blackout, Cal ISO's adoption of special rules for moving electricity through its system sparked controversy across the West, inciting claims that CAISO is not an honest broker and unfairly favors its home state.<sup>14</sup> Inertia and geography also have been powerful. The West consists of 38 separate electricity jurisdictions.<sup>15</sup> Each is independent; each has its own culture; each has its own way of planning and operating. These are hardly the ingredients of easy regionalization.

Today, though, with circumstances—political, economic, technical, environmental—quite different, a single roadblock stands in the way: governance.

The core sticking point stopping western energy providers from moving toward a west-wide market is that the Cal ISO's current governance structure favors California explicitly and implicitly. For the last four years, we have been part of a multi-university research project focused on trying to better understand the governance structures of RTOs across the United States.<sup>16</sup> RTOs use divergent methods and structures for making market rules, for involving stakeholders in changing those rules, and for interfacing with state regulators who are impacted by these markets.<sup>17</sup> As part of that project, we have conducted dozens of interviews with key players in the western electricity sector. States, understandably, care deeply about how their interests

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13. Conor Harrison & Shelley Welton, *The States that Opted Out: Politics, Power, and Exceptionalism in the Quest for Electricity Deregulation in the United States South*, 79 ENERGY RSCH. & SOC. SCI. 1, 3 (2021).

14. Robert Mullin, *FERC Approves CAISO Wheel-Through Rule Changes*, RTO INSIDER (Nov. 1, 2023), <https://perma.cc/8B3C-SBDQ>.

15. *Balancing Authority*, CAL. ISO, <https://perma.cc/L778-PBPG> (last visited June 24, 2024).

16. *Project RTOGov*, DUKE UNIV. NICHOLAS INST. FOR ENERGY, ENV'T & SUSTAINABILITY, <https://perma.cc/8G47-G693> (last visited Mar. 25, 2024).

17. See Stephanie Lenhart & Dalten Fox, *Participatory Democracy in Dynamic Contexts: A Review of Regional Transmission Organization Governance in the United States*, 83 ENERGY RSCH. & SOC. SCI. 102345, 6 (2022). For a discussion of the intersection of federal and state authority and stakeholder power in regional governance organizations, see Stephanie Lenhart & Dalten Fox, *Structural Power in Sustainability Transitions: Case Studies of Energy Storage Integration into Regional Transmission Organization Decision Processes*, FRONTIERS IN CLIMATE Dec. 2021, at 1, 1-17.

will be represented in these markets, particularly when the electricity providers they regulate may give up operational control of their assets to an independent third party.<sup>18</sup>

Consistently, the primary hesitation stakeholders express about joining a CAISO-run western electricity market is the organization's governance structure. As one interviewee said, "Governance is huge.... California will hit a wall, if there isn't major governance changes there."<sup>19</sup> Echoed another, "[I]t's either an entire west-wide market—California gets their act together and we figure it all out collectively—or it's California and then everybody else."<sup>20</sup> A third punctuated the point, "[T]his whole impulse of California to, like, wall itself off is not helpful."<sup>21</sup>

These objections should not be surprising. By law, California's governor appoints CAISO's Board.<sup>22</sup> CAISO's charter charges the Board with efficiently and reliably running the electricity grid consistent with California law.<sup>23</sup> And, statutorily, Cal ISO must "conduct its operations" to advance "the interests of the people of the state."<sup>24</sup> In a region where state politics vary widely and independence is one helix in the region's cultural DNA, the idea of handing over electricity assets to an entity charged with protecting one state above others is a non-starter.

## II. Isolation Is Inferior

The problem with this governance roadblock is not just that it negatively impacts the region. It hurts California.

The leading study on an expanded western electricity market demonstrates this from every angle. That study, conducted at the behest of

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18. States have an obligation to ensure regional wholesale market participation is in the public interest and that it does not impede their authority for resource planning and adequacy assurance. For a detailed explanation of state regulatory authority that may come into play as utilities consider joining broader western markets or a full RTO, see Stephanie Lenhart & Lincoln L. Davies, *Western Electricity Emerging Markets: State-Level Regulatory Analysis*, DUKE UNIV. NICHOLAS INST. FOR ENERGY, ENV'T & SUSTAINABILITY (Mar. 27, 2023), <https://perma.cc/57T4-SCGM>.
19. Anonymized Video Interview with Western Electricity Market Stakeholder (Nov. 23, 2021) (on file with author).
20. Anonymized Video Interview with Western Electricity Market Stakeholder (Mar. 3, 2022) (on file with author).
21. Anonymized Video Interview with Western Electricity Market Stakeholder (Nov. 11, 2021) (on file with author).
22. CAL. PUB. UTIL. CODE § 337(a) (West 2024).
23. Erik Saltmarsh, *Articles of Incorporation of California Independent System Operator Corporation*, CAL. SEC'Y OF STATE (May 6, 1997), <https://perma.cc/D9LX-VAWR>.
24. CAL. PUB. UTIL. CODE § 345.5(a) (West 2023).

Utah, Colorado, Idaho, and Montana under a federal grant, shows that a full-fledged west-wide RTO could deliver nearly \$2 billion in electricity savings annually.<sup>25</sup> These savings come from the reduced need to build new electricity generation facilities and lower costs of running a reliable system because electricity trades among states drive down costs. In this scenario, California would accrue nearly \$500 million in yearly benefits.<sup>26</sup> However, if a second western RTO forms without CAISO, regional benefits drop by \$569 million per year.<sup>27</sup> And, California's own benefits fall nearly fourfold—from \$478 million to \$124 million annually.<sup>28</sup>

Other studies have confirmed the very real costs of western market fragmentation. Last year, a comprehensive report, commissioned by California and conducted by the National Renewable Energy Laboratory, emphasized the importance of western market regionalization.<sup>29</sup> The report found a “consistent narrative” among studies examining the question of how electricity markets should be developed in the West: “[T]he preponderance of literature suggests regional cooperation will help California and other states realize cost savings and common energy policy goals.”<sup>30</sup> Thus, the report specifically emphasized the importance of keeping open the option of a west-wide market. “An RTO, because it is a more comprehensive structure for cooperation that optimizes a wider array of grid functions, tends to yield greater cost savings and grid flexibility than more limited forms of cooperation.”<sup>31</sup>

These benefits from a broader market will amplify as regionalization’s lower electricity costs cascade. A 2022 analysis completed for Advanced Energy Economy (now Advanced Energy United)—a national association of companies committed to achieving 100% clean energy that includes Amazon, Apple, Google, Microsoft, Rivian, and solar companies like Sunrun—modeled the macroeconomic effects of moving to a west-wide RTO.<sup>32</sup> The study found that

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25. Energy Strategies, The State-Led Market Study: Technical Report 2, 7 (2021), <https://perma.cc/AA54-7UG5>.

26. *Id.* at 7, 72.

27. *See id.* at 7, 72.

28. *Id.* at 7, 50, 72.

29. David Hurlbut, Mark Greenfogel & Brittany Speetles, The Impacts on California of Expanded Regional Cooperation to Operate the Western Grid (Final Report), (2023), <https://perma.cc/Z3T5-WH57>.

30. *Id.* at vi, vii.

31. *Id.* at vii.

32. Energy Strategies, LLC & Peterson & Assocs., Western RTO Economic Impact Study: Region-Wide Analysis (2022), <https://perma.cc/3JXD-933Q>. Members of Advanced Energy United are diverse. *See* Advanced Energy United Members & Advanced Energy Careers, Advanced Energy United, <https://perma.cc/P6GW-QT6Q> (last visited July 23, 2024).

a western RTO would create between 159,000 and 657,000 permanent jobs, new annual tax revenue of \$619 million to \$2.4 billion, and between \$19 billion and \$79 billion in gross economic activity.<sup>33</sup>

Fragmenting the West would inevitably erode these benefits. Indeed, studies conducted for CAISO itself show that isolating California from the rest of the West's emerging electricity markets will harm the state: "An RTO that added only PacifiCorp to the existing CAISO footprint could save California customers about \$70 million per year, or about 0.1% of retail costs; a West-wide RTO, on the other hand, could save \$1.3 billion to \$1.9 billion per year."<sup>34</sup>

In this way, California's reluctance to open the Cal ISO to regionalization creates the prospect of a perfect lose-lose situation. It risks effectively islanding the state from much of the West while simultaneously scuttling the broader region's ability to take advantage of the myriad benefits an RTO affords.

### III. Greening the Grid

California should not be blamed for concerns over loosening control of CAISO. The concerns are rational. California has invested significantly—economically and politically—in creating an expert, trustworthy organization that strives to reliably manage the grid and effectuate the state's energy policies.<sup>35</sup> It also has been a leader—nationally and regionally—in seeking to address the pressing, myriad challenges of climate change.<sup>36</sup> Protecting these investments is consistent not only with state sovereignty but California's duty of care to its citizens.

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33. *Id.* at 2.

34. Hurlbut, *supra* note 29, at 31.

35. California was a national leader in the effort to restructure the electricity industry in the 1990s and 2000s. The state effectuated that effort in part by creating CAISO and the now-defunct California Power Exchange (CALPX), one casualty of the California energy crisis at the turn of the century. For a synopsis of that episode, see LINCOLN L. DAVIES, ALEXANDRA B. KLASS, HARI M. OSOFSKY, JOSEPH P. TOMAIN & ELIZABETH J. WILSON ENERGY LAW AND POLICY 385-86 (3d ed. 2022); James L. Sweeney, *The California Electricity Crisis: Lessons for the Future*, 32 THE BRIDGE 23, 24-27 (2002). For more in-depth treatments, see Sidney A. Shapiro & Joseph P. Tomain, *Rethinking Reform of Electricity Markets*, 40 WAKE FOREST L. REV. 497 (2005); Jacqueline Lang Weaver, *Can Energy Markets Be Trusted? The Effect of the Rise and Fall of Enron on Energy Markets*, 4 HOUSTON BUS. & TAX L.J. 1 (2004).

36. See generally Vicki Arroyo Kathryn A. Zyla, Gabe Pacyniak & Melissa Deas, *State Innovation on Climate Change: Reducing Emissions from Key Sectors While Preparing for a "New Normal,"* 10 HARV. L. & POL'Y REV. 385 (2016). (discussing California's leadership in addressing climate change).

A chief concern about regionalizing Cal ISO is that it will frustrate California's clean energy goals, which now aspire for 100% clean electricity by 2045.<sup>37</sup>

Tellingly, study after study shows that expansion to a west-wide RTO would facilitate, not frustrate, this objective. This is because expanding the electricity market deepens the diversity of resources available at any given moment: The sun still shines in Los Angeles when people in Salt Lake are getting home from work; the wind blows in Laramie on Palo Alto's cloudy days.

Though RTOs are not free from climate critique,<sup>38</sup> proof of regional markets' ability to reduce greenhouse gas emissions is abundant. The voluntary, day-of electricity market that CAISO now runs is so small in the context of the broader western electricity system that many players privately refer to it as peripheral. Still, that market already has cut climate emissions by nearly 1 million tons of CO<sub>2</sub>.<sup>39</sup> This reduction comes directly from the greater use of renewables in a broader market.<sup>40</sup>

Cal ISO itself predicts that a west-wide electricity market would advance the state's clean energy goals. CAISO modeled 2030 CO<sub>2</sub> emissions in California under a west-wide RTO.<sup>41</sup> They declined by 6.7%–7.5%, with even greater reductions if California imports more out-of-state renewables.<sup>42</sup> Regionally, CO<sub>2</sub> emissions would fall by 3%–4%.<sup>43</sup>

Advanced Energy Economy's study similarly found that creation of a western RTO would result, at the low end, in the installation of an additional 1,888 megawatts of clean energy—the equivalent of nearly *all* the electricity generation currently installed in Rhode Island.<sup>44</sup> On the high end, that figure could grow nearly fivefold.<sup>45</sup>

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37. CAL. PUB. UTIL. CODE § 454.53(a) (West 2023).

38. See Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, 109 CALIF. L. REV. 209, 241-51 (2021).

39. Market Performance & Advanced Analytics, Western Energy Imbalance Market Benefits Report, 1, 14, 16 (2024), <https://perma.cc/T3AF-HPSE>.

40. *See id.*

41. Hurlbut, *supra* note 29, at 32.

42. *Id.*

43. *Id.*

44. Energy Strategies, LLC & Peterson & Assocs., *supra* note 32, at 40-41. Rhode Island has a net summer generating capacity of 2,298 MW. U.S. Energy Info. Admin., *Rhode Island State Profile and Energy Estimates: Reserves* (last updated July 18, 2024), <https://perma.cc/RQM4-7DRL>. For comparison, Vermont has 857 MW. U.S. Energy Info. Admin., *Vermont State Profile and Energy Estimates: Reserves* (last updated July 18, 2024), <https://perma.cc/7HYG-VFXP>.

45. *Id.* at 41.

The multistate study led by Utah, Colorado, Idaho, and Montana was even more to the point. Among the scenarios it evaluated, “The RTO construct was the most effective at mitigat[ing] renewable curtailments . . . [and] also resulted in the least carbon emissions.”<sup>46</sup>

The other main concern that has blocked Cal ISO’s regionalization is opposition from organized labor, on the grounds that expanding CAISO could push jobs for building new renewables outside the state.<sup>47</sup>

Earlier this year, however, California’s unions said they now favor regionalization.<sup>48</sup> Backing a gradual rather than immediate expansion of Cal ISO, Marc Joseph, labor’s spokesperson, explained: “We do see potential benefits in optimizing dispatch of plants over a wider footprint . . . .” As the clean energy transition has taken hold, those benefits have changed from what they were in the past. “[L]ike everyone else here,” Joseph noted, “we’re acting in our own rational self-interest.”<sup>49</sup>

Part of the reason for the shift in labor’s position is that current discussions around CAISO’s potential regionalization differ significantly from past proposals. Earlier efforts assumed that CAISO’s balancing authority boundaries necessarily would expand.<sup>50</sup> That caused concern that renewables projects outside California could be used to satisfy the state’s clean electricity mandate.<sup>51</sup> Today, conversations around CAISO’s expansion envision more incremental change, which might include tighter integration with the rest of the West while retaining a California-specific balancing authority within a geographically larger, CAISO-run market or RTO.<sup>52</sup>

Also underpinning labor’s support for western energy regionalization is a new agreement, announced late last year, among three major unions key to building solar projects.<sup>53</sup> This agreement has been lauded as a way to hasten renewables development: It delineates which unions are responsible for each part of solar projects, which in turn should help smooth construction of large

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46. Energy Strategies, *supra* note 25, at 43-44.

47. Hudson Sangree, *CAISO Regionalization Bill Put on Hold*, RTO INSIDER (May 18, 2023), <https://perma.cc/9NAF-9YKP>.

48. Ayla Burnett, *Former Opponents Shift Position on CAISO ‘Regionalization’*, RTO INSIDER (Jan. 23, 2024), <https://perma.cc/GCY6-KQGP>.

49. *Id.* (quoting Joseph).

50. See Robert Mullin, *Past Opponents Now See Legislative Pathway to CAISO Regionalization*, RTO INSIDER (Apr. 21, 2024), <https://perma.cc/44H7-AAH7>.

51. *See id.*

52. *See id.*

53. See IBEW, IUOE, LIUNA Sign Historic Three-Union Solar Agreement, IBEW MEDIA CTR. (Oct. 14, 2023), <https://perma.cc/9354-ZRJ6>.

installations by coordinating the process.<sup>54</sup> It brings the rest of the West more in line with California, which already had a five-union agreement in place for new solar, in turn reducing concerns that solar jobs might go to non-union labor. And it creates a stronger local interest in new solar projects; local labor involvement may translate into local support rather than resistance for new projects.<sup>55</sup> Explained Kenneth Cooper, President of the International Brotherhood of Workers (IBEW), this agreement “will streamline the process of bringing large-scale solar projects onto the grid while ensuring they are done on time and under budget by experienced, skilled trades workers.”<sup>56</sup>

Yet regionalization will not just advance California’s clean energy goals. Keeping open the possibility of a west-wide electricity market also preserves a path to a future western RTO. Unlike markets alone, RTOs do not simply deliver lower prices. They also coordinate the electricity system, facilitate transmission planning, and help ensure overall resource adequacy. In a region where six of the eleven states are top ten nationally for growth<sup>57</sup> and climate change continues to scramble weather, water availability, and the economy’s very underpinnings, a region where massive power losses in the face of wildfires, atmospheric rivers, and ensuing floods are now far too common<sup>58</sup>—a region where every state is already at an “elevated risk” of an energy shortfall by 2025 or 2026<sup>59</sup>—the value of preserving this path to deeper and greater coordination through an RTO is real indeed.

#### IV. Seeking Solutions

With so many interests at stake, the puzzle of the West’s failure to coordinate its electricity system might seem unsolvable.

Certainly, the situation today embodies multiple dimensions and levels of complexity. In addition to CAISO, the Southwest Power Pool (SPP) has been actively courting parties to join its markets, with some measure of success.<sup>60</sup>

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54. Lee Harris, *Solar Could Become a Model for Sectoral Bargaining*, AM. PROSPECT (Oct. 27, 2023), <https://perma.cc/9N5J-65MC>.

55. See John Fitzgerald Weaver, *Three Unions Organize for Utility-scale Solar Projects*, PV MAG. (Oct. 24, 2023), <https://perma.cc/2XA8-J73>.

56. Harris, *supra* note 54 (quoting Cooper).

57. Joanna Biernacka-Lievstro & Alexandre Fall, *Southern States Gain Residents the Fastest*, PEW (May 17, 2023), <https://perma.cc/F7Z4-KRU9>.

58. See, e.g., Hannah Fry, *Historic Storms Knocked Out Power for Record Number of Californians*, L.A. TIMES (Feb. 8, 2024), <https://perma.cc/8XGQ-NJQ7>.

59. Rory Sweeney, *Almost All of Western Interconnection at Elevated Reliability Risk*, NERC Warns, NEWS DATA (Dec. 15, 2023), <https://perma.cc/LG4R-5EAL>.

60. Jason Plautz, *Southwest Power Pool Recruits More Utilities for Expansion*, POLITICO PRO (Sept. 18, 2023), <https://perma.cc/DR3W-5E7C>.

Both CAISO and SPP now run competing day-of spot markets, and both have announced rival markets to sell power on a day-ahead basis in the West.<sup>61</sup> This sudden, head-to-head competition has shifted the balance of western energy politics. Potentially, it could sharply fissure the region's electricity system.

At the same time, multiple other parties have stepped into the fray. In 2022, utilities in the Northwest led a charge to create a program for regionally coordinating generation planning and adequacy assurance across the region.<sup>62</sup> Then, over two dozen utilities stood up their own organization—the Western Markets Exploratory Group—to assess different possible electricity markets and governance structures.<sup>63</sup> In turn, last summer, nine state public utility commissioners and officials launched a new effort—the West-Wide Pathways Governance Initiative—charged with finding a route to “a West-wide market, inclusive of California,” that maximizes benefits regionwide.<sup>64</sup>

The pace and scope of these developments is nothing short of dizzying.

What these developments make clear is that the time for action is now. As electricity providers begin to line up with either Cal ISO's or SPP's day-ahead market, those alliances will quickly create inertia and path-dependency. If the CAISO governance roadblock is not removed, that inertia inevitably will result in a fractured, two-market West.

There is a path to removing this roadblock.

That path is not the one California already has tried. Prior efforts to regionalize Cal ISO's governance have crumbled under political pressure and the weight of their own elaborateness. Attempts in 2017, 2018, and again last year died in committee.<sup>65</sup> The state previously adopted a law that stopped Cal ISO from becoming a multistate organization unless it first cleared a labyrinthine set of procedural and political hurdles.<sup>66</sup> The sunset date for those

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61. See *supra* note 10. FERC has conditionally approved CAISO's day-ahead market. See *Cal. Indep. Sys. Operator Corp.*, 185 F.E.R.C. ¶ 61,210 (2023). SPP's day-ahead market remains pending before FERC. On June 4, 2024, SPP also filed with FERC to create a western RTO, with a go-live date of 2026. See *SPP Files Expanded Regional Transmission Organization Tariff to Include Western Entities*, SOUTHWEST POWER POOL (June 5, 2024), <https://perma.cc/7B9W-E88>.

62. *Northwest Power Pool*, 182 F.E.R.C. ¶ 61,063 (2023).

63. Paul Ciampoli, *New Participants in Western Markets Exploratory Group Include Public Power Utilities*, AM. PUB. POWER ASS'N. (July 22, 2022), <https://perma.cc/Q56Z-R2KG>.

64. Letter from David Danner, Wash. Utils. & Transp. Comm'n Chair et al. to Megan Decker, Or. Pub. Util. Comm'n Chair et al., W. INTERSTATE ENERGY BD. (July 14, 2023), <https://perma.cc/V6D6-QZDB>.

65. Assem. B. 813, 2017-2018 Reg. Sess. (Cal. 2018); Assem. B. 538, 2023-2024 Reg. Sess. (Cal. 2024); see Jeff McDonald, *Brown's Plan to Subsume California into a Regional Energy Grid Dies at End of Legislative Session*, S.D. UNION-TRIB. (Sept. 1, 2018).

66. CAL. PUB. UTIL. CODE § 359.5 (West 2016).

procedures lapsed in 2019.<sup>67</sup> Now on the books is a barrier even more colossal: the expectation that states enter into a regional compact in order to grow CAISO geographically.<sup>68</sup>

Instead, any new approach must embody the lessons learned to date—from the success of Cal ISO’s growing day-of market, and from past failures to regionalize.

Three are key.

First, incrementalism must be embraced. The West has come, finally, to a position of possible energy regionalization only piecemeal, over time, by tentatively inching forward. The common mistake of past efforts was the expectation of an immediate west-wide RTO. The reality is that even in other parts of the country, RTOs have not just appeared, spawning from nothing. They evolved from preexisting power pools and grew organically as they proved their value.<sup>69</sup> This same process is taking place in the West, in its own way and without the head start other regions enjoyed. Utilities are now willing to enter *day-ahead* markets because *day-of* exchanges have provided real value and created trust. The next step might be to a full RTO, but it probably is not. Other developments are likely first. Any legislative reform of Cal ISO’s governance thus must allow for natural growth and iterative development, rather than demanding full-scale, full-on regionalization out of the gate.<sup>70</sup>

Second, flexibility must be allowed. If the West’s current state of affairs shows anything, it is that predicting—much less prescribing—precisely how these markets will develop is futile. Prior efforts to regionalize CAISO eschewed this reality. The one recent effort actually adopted into legislation dictated no fewer than eleven steps before Cal ISO could shift to a regional entity, presumably to preserve political control of any proposal’s particulars. Those steps included multiple points where an agreement to regionalize

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67. *Id.* § 359.5(e)(4)(i).

68. *Id.* §§ 352, 359 (West 2023).

69. See Lenhart & Fox, *Structural Power in Sustainability Transitions*, *supra* note 17, at 4-6; Ari Peskoe, *Is the Utility Transmission Syndicate Forever?*, 42 ENERGY L.J. 1, 14-20, 24-25 (2021).

70. There is a deep literature on the relative merits of radical versus incremental legal reform. See, e.g., GREG BERMAN & AUBREY FOX, *GRADUAL: THE CASE FOR INCREMENTAL CHANGE IN A RADICAL AGE* (2023); L. R. Jones & Frederick Thompson, *Incremental vs. Comprehensive Reform of Economic Regulation: Predictable Outcomes and Unintended Consequences*, 43 AM. J. ECON. & SOC. 1 (1984); Jayesh Rathod, *Transformative Immigration Lawyering*, 132 YALE L.J. 632 (2022); Margo Schlanger, *Incrementalist vs. Maximalist Reform: Solitary Confinement Case Studies*, 115 NW. U. L. REV. 273 (2020); Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLAL. REV. 1544 (2022). The reality in the context of western electricity markets is that the region’s history is littered with failed efforts to create full RTOs from whole cloth: IndeGo and Desert Star in the 1990s, RTO West and WestConnect in the early 2000s, Grid West after that, and so on and so forth.

CAISO could be effectively vetoed after the fact: with three separate California agencies, with California's governor, with the state legislature, and with the governor again.<sup>71</sup> Prior, failed legislation likewise included nearly two dozen details of what a regionalized CAISO can and cannot be—from the regionalized entity's governance structure to minutiae about its market form, from multiple likely controversial assurances that California law would control to more anodyne mandates about document availability and posting.<sup>72</sup> The opposite approach is needed. Given the sheer number of electricity providers involved and the divergent politics of the region's states, wide berth must be afforded as stakeholders hash out the details of what market structure is acceptable.

Third, governance must be regional and equitable. This cannot be repeated enough. It is unquestionably the core roadblock preventing Cal ISO's expansion. The legislation introduced in California last year recognized this principle,<sup>73</sup> and time and again, stakeholders stress its importance. There is no single governance model that must prevail. RTOs and ISOs nationwide represent state interests in different ways. The Western Pathways Initiative already is exploring an array of possible scenarios, focused on a mixture of system structures and governance arrangements.<sup>74</sup> But the throughline connecting all these ideas is that no west-wide market can emerge unless all states involved, not just California, have a say in how it operates.

## Conclusion

What these principles point to is a simple, straightforward solution. Electricity providers need a clear signal—very soon—whether California is going to open the door to electricity regionalization. That signal cannot come with so many conditions or else it appears as a false promise.

Instead, the California legislature should declare that it affirmatively favors Cal ISO's regionalization and make legal that possibility once the appropriate regulators (say, the California PUC, or both the PUC and the California Energy Commission) approve it.

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71. See CAL. PUB. UTIL. CODE § 359.5(e) (West 2016).

72. See Assem. B. 813 § 6, 2017-2018 Reg. Sess. (Cal. 2018); Assem. B. 538 § 7, 2023-2024 Reg. Sess. (Cal. 2024); *see* McDonald, *supra* note 65.

73. Assem. B. 538 § 1(c), 2023-2024 Reg. Sess. (Cal. 2024) ("It is the further intent of the Legislature to ensure that the governance of the Independent System Operator, or its successor, provides stakeholders throughout the west with confidence that the governance structure respects and considers the interests of all stakeholders....").

74. See *Phase 1 Straw Proposal*, WEST-WIDE GOVERNANCE PATHWAYS INITIATIVE (Apr. 10, 2024), <https://perma.cc/873Y-FD7J>.

This would give market participants and other state regulators the information they need: the knowledge that regionalization, with California as a partner, is a real possibility. It will, in turn, afford stakeholders the room to work with CAISO and each other to see if that is the optimal choice.

This solution will not guarantee that every utility or state will choose Cal ISO over SPP. Nor should it. Parties should choose to enter markets, whether CAISO or SPP, on their own merits. But it will mean there is a real choice.

For California, and for the West, there is virtually no downside to this path.

And the value could be immense.