



June 20, 2018

Honorable Hannah Beth Jackson
Chair
California Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: AB 813 (Holden) -- Oppose – Would Preempt Energy Manipulation Lawsuits

Senator Jackson,

In our continued opposition to AB 813, we bring to your attention the report Consumer Watchdog issued this week: *Betting Against The House: How California's Leaders Could Gamble Away Our Energy Future On A Western Power Trading Casino*, which can be found at <https://consumerwatchdog.org/sites/default/files/2018-06/BettingAgainstTheHouse.pdf>

The report reveals how AB 813 will leave the market open to trading manipulation that will raise electricity rates. The report also shows how the legislation undermines California's control of carbon emissions and pollution from power plants by empowering Trump appointees to overturn California laws.

New information has also come to our attention that we feel compelled to share with this committee. Californians recovered hundreds of millions of dollars from energy manipulators like Enron, Duke, NRG, Williams and others only because of civil lawsuits and resulting settlements filed on their behalf. Conversations with one of the lead attorney in these cases, former City Attorney and private plaintiff lawyer Mike Aguirre, reveals that the scheme envisioned by AB 813 would prevent such lawsuits over electricity manipulation in the future.

The cases depended on cooperation with the California Independent Systems Operator (CAISO), an ally in proving the manipulation and providing evidence. The cases were filed in state court alleging unfair competition and other unfair business practices.

Under AB 813, CAISO would cease to exist and be replaced with Western Regional Transmission Operator appointed by unspecified corporate interests in unspecified states. Governance would be dominated by trading industry representatives, rather than California officials vetted by the Senate and appointed by California's Governor to serve the interests of our

state. Consumers would lose a vital ally with no consumer protections in place at the new regional operator.

As outlined in our report, the new multi-state organization would represent the industry, not California consumers, and disputes over energy manipulation or environmental protection would be under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

FERC would be empowered to invalidate California laws once we participate in a multi-state energy trading system, rather than our current mostly-California-only system. While the report expresses concern about environmental and consumer protection laws, Mr. Aguirre explains that the Western market and FERC could also preempt the very state laws that Californians sued under to recoup their losses during the energy manipulation schemes associated with deregulation at the turn of the century.

In other words, common law causes of action and state statutes against unfair competition are as likely to be invalidated as other environmental and consumer statutes – leaving Californians at risk of not having a legal remedy under the next manipulation scheme. They would face FERC preemption.

As Chair of the Judiciary Committee, we urge you to explore these issues at next Tuesday's hearing and oppose AB 813.

Thank you for your consideration.

Best,

A handwritten signature in black ink, appearing to read "J. Court". The signature is written in a cursive, flowing style.

Jamie Court
President, Consumer Watchdog