

**Introduced by Senator Dutton**February 22, 2008

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An act to amend Sections 216, 330, 331, 335, 339, 340, 341.2, 341.5, 359, 361, 365, 367, 373, and 376, of, to repeal Sections 338, 367.7, and 390 of, and to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to the electricity.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1536, as introduced, Dutton. Electrical restructuring: Power Exchange.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The existing restructuring of the electrical services industry provides for the creation of the Power Exchange as an incorporated public benefit nonprofit corporation.

This bill would repeal the provisions creating the Power Exchange and repeal provisions pertaining to the prescribed functions of the Power Exchange. The bill would make conforming changes to existing law by deleting references to the Power Exchange. The bill would state that it does not preclude a reorganized Power Exchange from winding up its operations pursuant to a plan in bankruptcy and pursuant to orders of the Federal Energy Regulatory Commission.

The existing definition of a "public utility" within the Public Utilities Act provides that ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission (FERC) as an exempt wholesale generator pursuant to a specified section of the Public Utility Holding Company Act of 1935 does not make a corporation or person a public utility solely due to the ownership or operation of the

facility. The existing definition of an “exempt wholesale generator” defined the term by incorporating the definition from the Public Utility Holding Company Act of 1935. The federal Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935 and adopted the Public Utility Holding Company Act of 2005, which includes a definition for “exempt wholesale generator.” The definition of a “public utility” provides that ownership, control, operation, or management of an electric plant used for sales into the Power Exchange does not make a corporation or person a public utility solely because of that ownership, participation, or sale.

This bill would delete references to facilities certified by the FERC as “exempt wholesale generators” pursuant to the Public Utility Holding Company Act of 1935, and would instead reference the definition of that term in the Public Utility Holding Company Act of 2005. The bill would replace the provision in the definition of a “public utility” that provides that ownership, control, operation, or management of an electric plant used for sales into the Power Exchange does not make a corporation or person a public utility with a provision that ownership, control, operation, or management of an electric plant used for sales into a market established and operated by the Independent System Operator or any other wholesale electricity market does not make a corporation or person a public utility solely due to the ownership, participation, or sale.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 216 of the Public Utilities Code is
- 2 amended to read:
- 3 216. (a) “Public utility” includes every common carrier, toll
- 4 bridge corporation, pipeline corporation, gas corporation, electrical
- 5 corporation, telephone corporation, telegraph corporation, water
- 6 corporation, sewer system corporation, and heat corporation, where
- 7 the service is performed for, or the commodity is delivered to, the
- 8 public or any portion thereof.
- 9 (b) Whenever any common carrier, toll bridge corporation,
- 10 pipeline corporation, gas corporation, electrical corporation,
- 11 telephone corporation, telegraph corporation, water corporation,
- 12 sewer system corporation, or heat corporation performs a service

1 for, or delivers a commodity to, the public or any portion thereof  
2 for which any compensation or payment whatsoever is received,  
3 that common carrier, toll bridge corporation, pipeline corporation,  
4 gas corporation, electrical corporation, telephone corporation,  
5 telegraph corporation, water corporation, sewer system corporation,  
6 or heat corporation, is a public utility subject to the jurisdiction,  
7 control, and regulation of the commission and the provisions of  
8 this part.

9 (c) When any person or corporation performs any service for,  
10 or delivers any commodity to, any person, private corporation,  
11 municipality, or other political subdivision of the state, that in turn  
12 either directly or indirectly, mediately or immediately, performs  
13 that service for, or delivers that commodity to, the public or any  
14 portion thereof, that person or corporation is a public utility subject  
15 to the jurisdiction, control, and regulation of the commission and  
16 the provisions of this part.

17 (d) Ownership or operation of a facility that employs  
18 cogeneration technology or produces power from other than a  
19 conventional power source or the ownership or operation of a  
20 facility which employs landfill gas technology does not make a  
21 corporation or person a public utility within the meaning of this  
22 section solely because of the ownership or operation of that facility.

23 (e) Any corporation or person engaged directly or indirectly in  
24 developing, producing, transmitting, distributing, delivering, or  
25 selling any form of heat derived from geothermal or solar resources  
26 or from cogeneration technology to any privately owned or publicly  
27 owned public utility, or to the public or any portion thereof, is not  
28 a public utility within the meaning of this section solely by reason  
29 of engaging in any of those activities.

30 (f) The ownership or operation of a facility that sells compressed  
31 natural gas at retail to the public for use only as a motor vehicle  
32 fuel, and the selling of compressed natural gas at retail from that  
33 facility to the public for use only as a motor vehicle fuel, does not  
34 make the corporation or person a public utility within the meaning  
35 of this section solely because of that ownership, operation, or sale.

36 (g) Ownership or operation of a facility that ~~has been certified~~  
37 ~~by the Federal Energy Regulatory Commission as is~~ an exempt  
38 wholesale generator pursuant to Section 32 of the Public Utility  
39 Holding Company Act of 1935 (Chapter 2C (commencing with  
40 Section 79) of Title 15 of the United States Code), *as defined in*

1 *the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec.*  
2 *16451 (6))*, does not make a corporation or person a public utility  
3 within the meaning of this section, solely due to the ownership or  
4 operation of that facility.

5 (h) The ownership, control, operation, or management of an  
6 electric plant used for direct transactions or participation directly  
7 or indirectly in direct transactions, as permitted by subdivision (b)  
8 of Section 365, sales into ~~the Power Exchange referred to in Section~~  
9 *365 a market established and operated by the Independent System*  
10 *Operator or any other wholesale electricity market*, or the use or  
11 sale as permitted under subdivisions (b) to (d), inclusive, of Section  
12 218, shall not make a corporation or person a public utility within  
13 the meaning of this section solely because of that ownership,  
14 participation, or sale.

15 SEC. 2. Section 330 of the Public Utilities Code is amended  
16 to read:

17 330. In order to provide guidance in carrying out this chapter,  
18 the Legislature finds and declares all of the following:

19 (a) It is the intent of the Legislature that a cumulative rate  
20 reduction of at least 20 percent be achieved not later than April 1,  
21 2002, for residential and small commercial customers, from the  
22 rates in effect on June 10, 1996. In determining that the April 1,  
23 2002, rate reduction has been met, the commission shall exclude  
24 the costs of the competitively procured electricity and the costs  
25 associated with the rate reduction bonds, as defined in Section  
26 840.

27 (b) The people, businesses, and institutions of California spend  
28 nearly twenty-three billion dollars (\$23,000,000,000) annually on  
29 electricity, so that reductions in the price of electricity would  
30 significantly benefit the economy of the state and its residents.

31 (c) The Public Utilities Commission has opened rulemaking  
32 and investigation proceedings with regard to restructuring  
33 California's electric power industry and reforming utility  
34 regulation.

35 (d) The commission has found, after an extensive public review  
36 process, that the interests of ratepayers and the state as a whole  
37 will be best served by moving from the regulatory framework  
38 existing on January 1, 1997, in which retail electricity service is  
39 provided principally by electrical corporations subject to an  
40 obligation to provide ultimate consumers in exclusive service

1 territories with reliable electric service at regulated rates, to a  
2 framework under which competition would be allowed in the  
3 supply of electric power and customers would be allowed to have  
4 the right to choose their supplier of electric power.

5 (e) Competition in the electric generation market will encourage  
6 innovation, efficiency, and better service from all market  
7 participants, and will permit the reduction of costly regulatory  
8 oversight.

9 (f) The delivery of electricity over transmission and distribution  
10 systems is currently regulated, and will continue to be regulated  
11 to ensure system safety, reliability, environmental protection, and  
12 fair access for all market participants.

13 (g) Reliable electric service is of utmost importance to the safety,  
14 health, and welfare of the state's citizenry and economy. It is the  
15 intent of the Legislature that electric industry restructuring should  
16 enhance the reliability of the interconnected regional transmission  
17 systems, and provide strong coordination and enforceable protocols  
18 for all users of the power grid.

19 (h) It is important that sufficient supplies of electric generation  
20 will be available to maintain the reliable service to the citizens and  
21 businesses of the state.

22 (i) Reliable electric service depends on conscientious inspection  
23 and maintenance of transmission and distribution systems. To  
24 continue and enhance the reliability of the delivery of electricity,  
25 the Independent System Operator and the commission, respectively,  
26 should set inspection, maintenance, repair, and replacement  
27 standards.

28 (j) It is the intent of the Legislature that California enter into a  
29 compact with western region states. That compact should require  
30 the publicly and investor-owned utilities located in those states,  
31 that sell energy to California retail customers, to adhere to  
32 enforceable standards and protocols to protect the reliability of the  
33 interconnected regional transmission and distribution systems.

34 (k) In order to achieve meaningful wholesale and retail  
35 competition in the electric generation market, it is essential to do  
36 all of the following:

37 (1) Separate monopoly utility transmission functions from  
38 competitive generation functions, through development of  
39 independent, third-party control of transmission access and pricing.

1 (2) Permit all customers to choose from among competing  
2 suppliers of electric power.

3 (3) Provide customers and suppliers with open,  
4 nondiscriminatory, and comparable access to transmission and  
5 distribution services.

6 (l) The commission has properly concluded that:

7 (1) This competition will best be introduced by the creation of  
8 an Independent System Operator ~~and an independent Power~~  
9 ~~Exchange~~.

10 (2) Generation of electricity should be open to competition.

11 (3) There is a need to ensure that no participant in these new  
12 market institutions has the ability to exercise significant market  
13 power so that operation of the new market institutions would be  
14 distorted.

15 (4) These new market institutions should commence  
16 simultaneously with the phase in of customer choice, and the public  
17 will be best served if these institutions and the nonbypassable  
18 transition cost recovery mechanism referred to in subdivisions (s)  
19 to (w), inclusive, are in place simultaneously and no later than  
20 January 1, 1998.

21 (m) It is the intention of the Legislature that California's publicly  
22 owned electric utilities and investor-owned electric utilities should  
23 commit control of their transmission facilities to the Independent  
24 System Operator. These utilities should jointly advocate to the  
25 Federal Energy Regulatory Commission a pricing methodology  
26 for the Independent System Operator that results in an equitable  
27 return on capital investment in transmission facilities for all  
28 Independent System Operator participants.

29 (n) Opportunities to acquire electric power in the competitive  
30 market must be available to California consumers as soon as  
31 practicable, but no later than January 1, 1998, so that all customers  
32 can share in the benefits of competition.

33 (o) Under the existing regulatory framework, California's  
34 electrical corporations were granted franchise rights to provide  
35 electricity to consumers in their service territories.

36 (p) Consistent with federal and state policies, California  
37 electrical corporations invested in power plants and entered into  
38 contractual obligations in order to provide reliable electrical service  
39 on a nondiscriminatory basis to all consumers within their service  
40 territories who requested service.

1 (q) The cost of these investments and contractual obligations  
2 are currently being recovered in electricity rates charged by  
3 electrical corporations to their consumers.

4 (r) Transmission and distribution of electric power remain  
5 essential services imbued with the public interest that are provided  
6 over facilities owned and maintained by the state's electrical  
7 corporations.

8 (s) It is proper to allow electrical corporations an opportunity  
9 to continue to recover, over a reasonable transition period, those  
10 costs and categories of costs for generation-related assets and  
11 obligations, including costs associated with any subsequent  
12 renegotiation or buyout of existing generation-related contracts,  
13 that the commission, prior to December 20, 1995, had authorized  
14 for collection in rates and that may not be recoverable in market  
15 prices in a competitive generation market, and appropriate additions  
16 incurred after December 20, 1995, for capital additions to  
17 generating facilities existing as of December 20, 1995, that the  
18 commission determines are reasonable and should be recovered,  
19 provided that the costs are necessary to maintain those facilities  
20 through December 31, 2001. In determining the costs to be  
21 recovered, it is appropriate to net the negative value of above  
22 market assets against the positive value of below market assets.

23 (t) The transition to a competitive generation market should be  
24 orderly, protect electric system reliability, provide the investors  
25 in these electrical corporations with a fair opportunity to fully  
26 recover the costs associated with commission approved  
27 generation-related assets and obligations, and be completed as  
28 expeditiously as possible.

29 (u) The transition to expanded customer choice, competitive  
30 markets, and performance based ratemaking as described in  
31 Decision 95-12-063, as modified by Decision 96-01-009, of the  
32 Public Utilities Commission, can produce hardships for employees  
33 who have dedicated their working lives to utility employment. It  
34 is preferable that any necessary reductions in the utility workforce  
35 directly caused by electrical restructuring, be accomplished through  
36 offers of voluntary severance, retraining, early retirement,  
37 outplacement, and related benefits. Whether workforce reductions  
38 are voluntary or involuntary, reasonable costs associated with these  
39 sorts of benefits should be included in the competition transition  
40 charge.

1 (v) Charges associated with the transition should be collected  
2 over a specific period of time on a nonbypassable basis and in a  
3 manner that does not result in an increase in rates to customers of  
4 electrical corporations. In order to insulate the policy of  
5 nonbypassability against incursions, if exemptions from the  
6 competition transition charge are granted, a firewall shall be created  
7 that segregates recovery of the cost of exemptions as follows:

8 (1) The cost of the competition transition charge exemptions  
9 granted to members of the combined class of residential and small  
10 commercial customers shall be recovered only from those  
11 customers.

12 (2) The cost of the competition transition charge exemptions  
13 granted to members of the combined class of customers other than  
14 residential and small commercial customers shall be recovered  
15 only from those customers. The commission shall retain existing  
16 cost allocation authority provided that the firewall and rate freeze  
17 principles are not violated.

18 (w) It is the intent of the Legislature to require and enable  
19 electrical corporations to monetize a portion of the competition  
20 transition charge for residential and small commercial consumers  
21 so that these customers will receive rate reductions of no less than  
22 10 percent for 1998 continuing through 2002. Electrical  
23 corporations shall, by June 1, 1997, or earlier, secure the means  
24 to finance the competition transition charge by applying  
25 concurrently for financing orders from the Public Utilities  
26 Commission and for rate reduction bonds from the California  
27 Infrastructure and Economic Development Bank.

28 (x) California's public utility electrical corporations provide  
29 substantial benefits to all Californians, including employment and  
30 support of the state's economy. Restructuring the electric services  
31 industry pursuant to the act that added this chapter will continue  
32 these benefits, and will also offer meaningful and immediate rate  
33 reductions for residential and small commercial customers, and  
34 facilitate competition in the supply of electric power.

35 SEC. 3. Section 331 of the Public Utilities Code is amended  
36 to read:

37 331. The definitions set forth in this section shall govern the  
38 construction of this chapter.

39 (a) "Aggregator" means any marketer, broker, public agency,  
40 city, county, or special district, that combines the loads of multiple

1 end-use customers in facilitating the sale and purchase of electric  
2 energy, transmission, and other services on behalf of these  
3 customers.

4 (b) “Broker” means an entity that arranges the sale and purchase  
5 of electric energy, transmission, and other services between buyers  
6 and sellers, but does not take title to any of the power sold.

7 (c) “Direct transaction” means a contract between any one or  
8 more electric generators, marketers, or brokers of electric power  
9 and one or more retail customers providing for the purchase and  
10 sale of electric power or any ancillary services.

11 (d) “Fire wall” means the line of demarcation separating  
12 residential and small commercial customers from all other  
13 customers as described in subdivision (e) of Section 367.

14 (e) “Marketer” means any entity that buys electric energy,  
15 transmission, and other services from traditional utilities and other  
16 suppliers, and then resells those services at wholesale or to an  
17 end-use customer.

18 (f) “Microcogeneration facility” means a cogeneration facility  
19 of less than one megawatt.

20 (g) “Restructuring ~~trusts~~ trust” means the ~~two~~ tax-exempt  
21 public benefit ~~trusts~~ trust established by Decision 96-08-038 of  
22 the Public Utilities Commission to provide for *the* design and  
23 development of the hardware and software systems for ~~the Power~~  
24 ~~Exchange~~ and the Independent System Operator, ~~respectively~~, and  
25 that may undertake other activities, as needed, as ordered by the  
26 commission.

27 (h) “Small commercial customer” means a customer that has a  
28 maximum peak demand of less than 20 kilowatts.

29 SEC. 4. Section 335 of the Public Utilities Code is amended  
30 to read:

31 335. In order to ensure that the interests of the people of  
32 California are served, a five-member Electricity Oversight Board  
33 is hereby created as provided in Section 336. For purposes of this  
34 chapter, any reference to the Oversight Board shall mean the  
35 Electricity Oversight Board. Its functions shall be all of the  
36 following:

37 (a) To oversee the Independent System Operator ~~and the Power~~  
38 ~~Exchange~~.

1 ~~(b) To determine the composition and terms of service and to~~  
2 ~~exercise the exclusive right to decline to confirm the appointments~~  
3 ~~of specific members of the governing board of the Power Exchange.~~

4 ~~(e)~~

5 ~~(b) To serve as an appeal board for majority decisions of the~~  
6 ~~Independent System Operator governing board, as they relate to~~  
7 ~~matters subject to exclusive state jurisdiction, as specified in~~  
8 ~~Section 339.~~

9 ~~(d) Those members of the Power Exchange governing board~~  
10 ~~whose appointments the Oversight Board has the exclusive right~~  
11 ~~to decline to confirm include proposed governing board members~~  
12 ~~representing agricultural end users, industrial end users,~~  
13 ~~commercial end users, residential end users, end users at large,~~  
14 ~~nonmarket participants, and public interest groups.~~

15 ~~(e)~~

16 ~~(c) To investigate any matter related to the wholesale market~~  
17 ~~for electricity to ensure that the interests of California's citizens~~  
18 ~~and consumers are served, protected, and represented in relation~~  
19 ~~to the availability of electric transmission and generation and~~  
20 ~~related costs, during periods of peak demand.~~

21 ~~SEC. 5. Section 338 of the Public Utilities Code is repealed.~~

22 ~~338. The Oversight Board shall have the exclusive right to~~  
23 ~~approve procedures and the qualifications for Power Exchange~~  
24 ~~governing board members specified in subdivision (d) of Section~~  
25 ~~335, all of whom shall be required to be electricity customers in~~  
26 ~~the area served by the Power Exchange. The Power Exchange~~  
27 ~~governing board shall include, but not be limited to, representatives~~  
28 ~~of investor-owned electric distribution companies, publicly owned~~  
29 ~~electric distribution companies, nonutility generators, public buyers~~  
30 ~~and sellers, private buyers and sellers, industrial end-users,~~  
31 ~~commercial end-users, residential end-users, agricultural end-users,~~  
32 ~~public interest groups, and nonmarket participant representatives.~~  
33 ~~The structural composition of the Power Exchange governing~~  
34 ~~board existing on July 1, 1999, shall remain in effect until an~~  
35 ~~agreement with a participating state is legally in effect. However,~~  
36 ~~prior to such an agreement, California shall retain the right to~~  
37 ~~change the Power Exchange governing board into a nonstakeholder~~  
38 ~~board. In the event of such a legislative change, revised bylaws~~  
39 ~~shall be filed with the Federal Energy Regulatory Commission~~

1 under Section 205 of the Federal Power Act (16 U.S.C.A. Sec.  
2 824d).

3 SEC. 6. Section 339 of the Public Utilities Code is amended  
4 to read:

5 339. (a) The Oversight Board is the appeal board for majority  
6 decisions of the Independent System Operator governing board  
7 relating to matters that are identified in subdivision (b) as they  
8 pertain to the Independent System Operator.

9 (b) The following matters are subject to California’s exclusive  
10 jurisdiction:

11 (1) Selections by California of governing board members, as  
12 described in Sections 335, ~~337, and 338~~ and 337.

13 (2) Matters pertaining to retail electric service or retail sales of  
14 electric energy.

15 (3) Ensuring that the purposes and functions of the Independent  
16 System Operator ~~and Power Exchange~~ are consistent with the  
17 purposes and functions of California nonprofit public benefit  
18 corporations, including duties of care and conflict of interest  
19 standards for directors of the ~~corporations~~ corporation.

20 (4) State functions assigned to the Independent System Operator  
21 ~~and Power Exchange~~ under state law.

22 (5) Open meeting standards and meeting notice requirements.

23 (6) Appointment of advisory representatives representing state  
24 interests.

25 (7) Public access to corporate records.

26 (8) The amendment of bylaws relevant to these matters.

27 (c) Only members of the Independent System Operator  
28 governing board may appeal a majority decision of the Independent  
29 System Operator related to any of the matters specified in  
30 subdivision (b) to the Oversight Board.

31 SEC. 7. Section 340 of the Public Utilities Code is amended  
32 to read:

33 340. The Oversight Board shall take the steps that are necessary  
34 to ensure the earliest possible incorporation of the Independent  
35 System Operator ~~and the Power Exchange~~ as ~~separately as an~~  
36 incorporated public benefit, nonprofit corporations under the  
37 Corporations Code.

38 SEC. 8. Section 341.2 of the Public Utilities Code is amended  
39 to read:

1 341.2. The Bagley-Keene Open Meeting Act (Article 9  
2 (commencing with Section 11120) of Chapter 1 of Part 1 of  
3 Division 3 of Title 2 of the Government Code) applies to meetings  
4 of the Oversight Board. In addition to the allowances of that act,  
5 the Oversight Board may hold a closed session ~~to consider the~~  
6 ~~appointment of one or more candidates to the governing board of~~  
7 ~~the Power Exchange, deliberate on matters involving the removal~~  
8 ~~of a member of the governing board of the Power Exchange, or to~~  
9 consider a matter based on information that has received a grant  
10 of confidential status pursuant to regulations of the Oversight  
11 Board, provided that any action taken on such a matter shall be  
12 taken by vote in an open session.

13 SEC. 9. Section 341.5 of the Public Utilities Code is amended  
14 to read:

15 341.5. (a) ~~The Independent System Operator and Power~~  
16 ~~Exchange~~ bylaws shall contain provisions that identify those  
17 matters specified in subdivision (b) of Section 339 as matters within  
18 state jurisdiction. The bylaws shall also contain provisions which  
19 state that California's bylaws approval function with respect to  
20 the matters specified in subdivision (b) of Section 339 shall not  
21 preclude the Federal Energy Regulatory Commission from taking  
22 any action necessary to address undue discrimination or other  
23 violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et  
24 seq.) or to exercise any other commission responsibility under the  
25 Federal Power Act. In taking any such action, the Federal Energy  
26 Regulatory Commission shall give due respect to California's  
27 jurisdictional interests in the functions of the Independent System  
28 ~~Operator and Power Exchange~~ and to attempt to accommodate  
29 state interests to the extent those interests are not inconsistent with  
30 the Federal Energy Regulatory Commission's statutory  
31 responsibilities. The bylaws shall state that any future agreement  
32 regarding the apportionment of the Independent System Operator  
33 ~~and Power Exchange~~ board appointment function among  
34 participating states associated with the expansion of the  
35 Independent System Operator ~~and Power Exchange~~ into a  
36 multistate ~~entities~~ *entity* shall be filed with the Federal Energy  
37 Regulatory Commission pursuant to Section 205 of the Federal  
38 Power Act (16 U.S.C.A. Sec. 824d).

39 (b) Any necessary bylaw changes to implement the provisions  
40 of Section 335, 337, ~~338~~, 339, or subdivision (a) of this section,

1 or changes required pursuant to an agreement as contemplated by  
2 subdivision (a) of this section with a participating state for a  
3 regional organization, shall be effective upon approval of the  
4 respective governing boards and the Oversight Board and  
5 acceptance for filing by the Federal Energy Regulatory  
6 Commission.

7 SEC. 10. Article 4 (commencing with Section 355) of Chapter  
8 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

9 SEC. 11. Section 359 of the Public Utilities Code is amended  
10 to read:

11 359. (a) It is the intent of the Legislature to provide for the  
12 evolution of the Independent System Operator ~~and the Power~~  
13 ~~Exchange~~ into *a regional organization* to promote  
14 the development of regional electricity transmission markets in  
15 the western states and to improve the access of consumers served  
16 by the Independent System Operator ~~and the Power Exchange~~ to  
17 those markets.

18 (b) The preferred means by which the voluntary evolution  
19 described in subdivision (a) should occur is through the adoption  
20 of a regional compact or other comparable agreement among  
21 cooperating party states, the retail customers of which states would  
22 reside within the geographic territories served by the Independent  
23 System Operator ~~and the Power Exchange~~.

24 (c) The agreement described in subdivision (b) should provide  
25 for all of the following:

26 (1) An equitable process for the appointment or confirmation  
27 by party states of members of the governing boards of the  
28 Independent System Operator ~~and the Power Exchange~~.

29 (2) A respecification of the size, structure, representation,  
30 eligible membership, nominating procedures, and member terms  
31 of service of the governing boards of the Independent System  
32 Operator ~~and the Power Exchange~~.

33 (3) Mechanisms by which each party state, jointly or separately,  
34 can oversee effectively the actions of the Independent System  
35 Operator ~~and the Power Exchange~~ as those actions relate to the  
36 assurance of electricity system reliability within the party state  
37 and to matters that affect electricity sales to the retail customers  
38 of the party state or otherwise affect the general welfare of the  
39 electricity consumers and the general public of the party state.

1 (4) The adherence by publicly owned and investor-owned  
2 utilities located in party states to enforceable standards and  
3 protocols to protect the reliability of the interconnected regional  
4 transmission and distribution systems.

5 SEC. 12. Section 361 of the Public Utilities Code is amended  
6 to read:

7 361. The commission shall ensure that any funds secured by  
8 the restructuring trusts established for the purposes of developing  
9 the Independent System Operator ~~and the Power Exchange~~ shall  
10 be placed at the disposal of the Independent System Operator ~~and~~  
11 ~~the Power Exchange respectively.~~

12 SEC. 13. Section 365 of the Public Utilities Code is amended  
13 to read:

14 365. The actions of the commission pursuant to this chapter  
15 shall be consistent with the findings and declarations contained in  
16 Section 330. In addition, the commission shall do all of the  
17 following:

18 (a) Facilitate the efforts of the state's electrical corporations to  
19 develop and obtain authorization from the Federal Energy  
20 Regulatory Commission for the creation and operation of an  
21 Independent System Operator ~~and an independent Power Exchange~~,  
22 for the determination of which transmission and distribution  
23 facilities are subject to the exclusive jurisdiction of the commission,  
24 and for approval, to the extent necessary, of the cost recovery  
25 mechanism established as provided in Sections 367 to 376,  
26 inclusive. The commission shall also participate fully in all  
27 proceedings before the Federal Energy Regulatory Commission  
28 in connection with the Independent System Operator ~~and the~~  
29 ~~independent Power Exchange~~, and shall encourage the Federal  
30 Energy Regulatory Commission to adopt protocols and procedures  
31 that strengthen the reliability of the interconnected transmission  
32 grid, encourage all publicly owned utilities in California to become  
33 full participants, and maximize enforceability of such protocols  
34 and procedures by all market participants.

35 (b) (1) Authorize direct transactions between electricity  
36 suppliers and end use customers, subject to implementation of the  
37 nonbypassable charge referred to in Sections 367 to 376, inclusive.  
38 Direct transactions shall commence simultaneously with the start  
39 of an Independent System Operator ~~and Power Exchange~~ referred  
40 to in subdivision (a). The simultaneous commencement shall occur

1 as soon as practicable, but no later than January 1, 1998. The  
2 commission shall develop a phase-in schedule at the conclusion  
3 of which all customers shall have the right to engage in direct  
4 transactions. Any phase-in of customer eligibility for direct  
5 transactions ordered by the commission shall be equitable to all  
6 customer classes and accomplished as soon as practicable,  
7 consistent with operational and other technological considerations,  
8 and shall be completed for all customers by January 1, 2002.

9 (2) Customers shall be eligible for direct access irrespective of  
10 any direct access phase-in implemented pursuant to this section if  
11 at least one-half of that customer's electrical load is supplied by  
12 energy from a renewable resource provider certified pursuant to  
13 Section 383, provided however that nothing in this section shall  
14 provide for direct access for electric consumers served by municipal  
15 utilities unless so authorized by the governing board of that  
16 municipal utility.

17 SEC. 14. Section 367 of the Public Utilities Code is amended  
18 to read:

19 367. The commission shall identify and determine those costs  
20 and categories of costs for generation-related assets and obligations,  
21 consisting of generation facilities, generation-related regulatory  
22 assets, nuclear settlements, and power purchase contracts,  
23 including, but not limited to, restructurings, renegotiations or  
24 terminations thereof approved by the commission, that were being  
25 collected in commission-approved rates on December 20, 1995,  
26 and that may become uneconomic as a result of a competitive  
27 generation market, in that these costs may not be recoverable in  
28 market prices in a competitive market, and appropriate costs  
29 incurred after December 20, 1995, for capital additions to  
30 generating facilities existing as of December 20, 1995, that the  
31 commission determines are reasonable and should be recovered,  
32 provided that these additions are necessary to maintain the facilities  
33 through December 31, 2001. These uneconomic costs shall include  
34 transition costs as defined in subdivision (f) of Section 840, and  
35 shall be recovered from all customers or in the case of fixed  
36 transition amounts, from the customers specified in subdivision  
37 (a) of Section 841, on a nonbypassable basis and shall:

38 (a) Be amortized over a reasonable time period, including  
39 collection on an accelerated basis, consistent with not increasing  
40 rates for any rate schedule, contract, or tariff option above the

1 levels in effect on June 10, 1996; provided that, the recovery shall  
2 not extend beyond December 31, 2001, except as follows:

3 (1) Costs associated with employee-related transition costs as  
4 set forth in subdivision (b) of Section 375 shall continue until fully  
5 collected; provided, however, that the cost collection shall not  
6 extend beyond December 31, 2006.

7 (2) Power purchase contract obligations shall continue for the  
8 duration of the contract. Costs associated with any buy-out,  
9 buy-down, or renegotiation of the contracts shall continue to be  
10 collected for the duration of any agreement governing the buy-out,  
11 buy-down, or renegotiated contract; provided, however, no power  
12 purchase contract shall be extended as a result of the buy-out,  
13 buy-down, or renegotiation.

14 (3) Costs associated with contracts approved by the commission  
15 to settle issues associated with the Biennial Resource Plan Update  
16 may be collected through March 31, 2002; provided that only 80  
17 percent of the balance of the costs remaining after December 31,  
18 2001, shall be eligible for recovery.

19 (4) Nuclear incremental cost incentive plans for the San Onofre  
20 nuclear generating station shall continue for the full term as  
21 authorized by the commission in Decision 96-01-011 and Decision  
22 96-04-059; provided that the recovery shall not extend beyond  
23 December 31, 2003.

24 (5) Costs associated with the exemptions provided in subdivision  
25 (a) of Section 374 may be collected through March 31, 2002,  
26 provided that only fifty million dollars (\$50,000,000) of the balance  
27 of the costs remaining after December 31, 2001, shall be eligible  
28 for recovery.

29 (6) Fixed transition amounts, as defined in subdivision (d) of  
30 Section 840, may be recovered from the customers specified in  
31 subdivision (a) of Section 841 until all rate reduction bonds  
32 associated with the fixed transition amounts have been paid in full  
33 by the financing entity.

34 (b) Be based on a calculation mechanism that nets the negative  
35 value of all above market utility-owned generation-related assets  
36 against the positive value of all below market utility-owned  
37 generation related assets. For those assets subject to valuation, the  
38 valuations used for the calculation of the uneconomic portion of  
39 the net book value shall be determined not later than December  
40 31, 2001, and shall be based on appraisal, sale, or other divestiture.

1 The commission's determination of the costs eligible for recovery  
2 and of the valuation of those assets at the time the assets are  
3 exposed to market risk or retired, in a proceeding under Section  
4 455.5, 851, or otherwise, shall be final, and notwithstanding Section  
5 1708 or any other provision of law, may not be rescinded, altered  
6 or amended.

7 (c) Be limited in the case of utility-owned fossil generation to  
8 the uneconomic portion of the net book value of the fossil capital  
9 investment existing as of January 1, 1998, and appropriate costs  
10 incurred after December 20, 1995, for capital additions to  
11 generating facilities existing as of December 20, 1995, that the  
12 commission determines are reasonable and should be recovered,  
13 provided that the additions are necessary to maintain the facilities  
14 through December 31, 2001. All "going forward costs" of fossil  
15 plant operation, including operation and maintenance,  
16 administrative and general, fuel and fuel transportation costs, shall  
17 be recovered solely ~~from independent Power Exchange revenues~~  
18 ~~or~~ from contracts with the Independent System Operator, provided  
19 that for the purposes of this chapter, the following costs may be  
20 recoverable pursuant to this section:

21 (1) Commission-approved operating costs for particular  
22 utility-owned fossil powerplants or units, at particular times when  
23 reactive power/voltage support is not yet procurable at  
24 market-based rates in locations where it is deemed needed for the  
25 reactive power/voltage support by the Independent System  
26 Operator, provided that the units are otherwise authorized to  
27 recover market-based rates and provided further that for an  
28 electrical corporation that is also a gas corporation and that serves  
29 at least four million customers as of December 20, 1995, the  
30 commission shall allow the electrical corporation to retain any  
31 earnings from operations of the reactive power/voltage support  
32 plants or units and shall not require the utility to apply any portions  
33 to offset recovery of transition costs. Cost recovery under the cost  
34 recovery mechanism shall end on December 31, 2001.

35 (2) An electrical corporation that, as of December 20, 1995,  
36 served at least four million customers, and that was also a gas  
37 corporation that served less than four thousand customers, may  
38 recover, pursuant to this section, 100 percent of the uneconomic  
39 portion of the fixed costs paid under fuel and fuel transportation  
40 contracts that were executed prior to December 20, 1995, and were

1 subsequently determined to be reasonable by the commission, or  
2 100 percent of the buy-down or buy-out costs associated with the  
3 contracts to the extent the costs are determined to be reasonable  
4 by the commission.

5 (d) Be adjusted throughout the period through March 31, 2002,  
6 to track accrual and recovery of costs provided for in this  
7 subdivision. Recovery of costs prior to December 31, 2001, shall  
8 include a return as provided for in Decision 95-12-063, as modified  
9 by Decision 96-01-009, together with associated taxes.

10 (e) (1) Be allocated among the various classes of customers,  
11 rate schedules, and tariff options to ensure that costs are recovered  
12 from these classes, rate schedules, contract rates, and tariff options,  
13 including self-generation deferral, interruptible, and standby rate  
14 options in substantially the same proportion as similar costs are  
15 recovered as of June 10, 1996, through the regulated retail rates  
16 of the relevant electric utility, provided that there shall be a firewall  
17 segregating the recovery of the costs of competition transition  
18 charge exemptions such that the costs of competition transition  
19 charge exemptions granted to members of the combined class of  
20 residential and small commercial customers shall be recovered  
21 only from these customers, and the costs of competition transition  
22 charge exemptions granted to members of the combined class of  
23 customers, other than residential and small commercial customers,  
24 shall be recovered only from these customers.

25 (2) Individual customers shall not experience rate increases as  
26 a result of the allocation of transition costs. ~~However, customers~~  
27 ~~who elect to purchase energy from suppliers other than the Power~~  
28 ~~Exchange through a direct transaction, may incur increases in the~~  
29 ~~total price they pay for electricity to the extent the price for the~~  
30 ~~energy exceeds the Power Exchange price.~~

31 (3) The commission shall retain existing cost allocation  
32 authority, provided the firewall and rate freeze principles are not  
33 violated.

34 SEC. 15. Section 367.7 of the Public Utilities Code is repealed.

35 ~~367.7. (a) It is the intent of the Legislature in enacting this~~  
36 ~~section to ensure that individual customers do not experience rate~~  
37 ~~increases as a result of the allocation of transition costs, in~~  
38 ~~accordance with paragraph (2) of subdivision (e) of Section 367.~~

39 ~~(b) The commission shall implement a methodology whereby~~  
40 ~~the Power Exchange energy credit for a customer with a meter~~

1 installed on or after June 30, 2000, that is capable of recording  
2 hourly data is calculated based on the actual hourly data for that  
3 customer. The Power Exchange energy credit for a customer with  
4 a meter installed before June 30, 2000, that is capable of recording  
5 hourly data shall, at the election of the customer, on a one-time  
6 basis before June 30, 2000, be calculated based on either (1) the  
7 actual hourly data for that customer or (2) the average load profile  
8 for that customer class. If the customer fails to make an election,  
9 that customer's Power Exchange energy credit shall continue to  
10 be based on the average load profile for that customer class.

11 (e) Additional incremental billing costs incurred as a result of  
12 the methodology implemented by the commission pursuant to  
13 subdivision (b) may be recoverable through rates for that customer  
14 class, if the commission finds that the costs are reasonable.

15 (d) The methodology implemented by the commission pursuant  
16 to subdivisions (b) and (e) shall not result in any shifts in cost  
17 between customer classes and shall be consistent with the firewall  
18 provision set forth in subdivision (c) of Section 367.

19 SEC. 16. Section 373 of the Public Utilities Code is amended  
20 to read:

21 373. (a) Electrical corporations may apply to the commission  
22 for an order determining that the costs identified in Sections 367,  
23 368, 375, and 376 not be collected from a particular class of  
24 customer or category of electricity consumption.

25 (b) Subject to the fire wall specified in subdivision (e) of Section  
26 367, the provisions of this section and Sections 372 and 374 shall  
27 apply in the event the commission authorizes a nonbypassable  
28 charge prior to the implementation of an Independent System  
29 Operator and Power Exchange referred to in subdivision (a) of  
30 Section 365.

31 SEC. 17. Section 376 of the Public Utilities Code is amended  
32 to read:

33 376. To the extent that the costs of programs to accommodate  
34 the implementation of direct access, the Power Exchange, and the  
35 Independent System Operator, that have been funded by an  
36 electrical corporation and have been found by the commission or  
37 the Federal Energy Regulatory Commission to be recoverable from  
38 the utility's customers, reduce an electrical corporation's  
39 opportunity to recover its utility generation-related plant and  
40 regulatory assets by the end of the year 2001, the electrical

1 corporation may recover unrecovered utility generation-related  
2 plant and regulatory assets after December 31, 2001, in an amount  
3 equal to the utility's cost of commission-approved or Federal  
4 Energy Regulatory Commission approved restructuring-related  
5 implementation programs. An electrical corporation's ability to  
6 collect the amounts from retail customers after the year 2001 shall  
7 be reduced to the extent the Independent System Operator ~~or the~~  
8 ~~Power Exchange~~ reimburses the electrical corporation for the costs  
9 of any of these programs.

10 SEC. 18. Section 390 of the Public Utilities Code is repealed.

11 390. ~~(a) Subject to applicable contractual terms, energy prices~~  
12 ~~paid to nonutility power generators by a public utility electrical~~  
13 ~~corporation based upon the commission's prescribed "short run~~  
14 ~~avoided cost energy methodology" shall be determined as set forth~~  
15 ~~in subdivisions (b) and (c).~~

16 ~~(b) Until the requirements of subdivision (c) have been satisfied,~~  
17 ~~short run avoided cost energy payments paid to nonutility power~~  
18 ~~generators by an electrical corporation shall be based on a formula~~  
19 ~~that reflects a starting energy price, adjusted monthly to reflect~~  
20 ~~changes in a starting gas index price in relation to an average of~~  
21 ~~current California natural gas border price indices. The starting~~  
22 ~~energy price shall be based on 12-month averages of recent,~~  
23 ~~pre-January 1, 1996, short-run avoided energy prices paid by each~~  
24 ~~public utility electrical corporation to nonutility power generators.~~  
25 ~~The starting gas index price shall be established as an average of~~  
26 ~~index gas prices for the same annual periods.~~

27 ~~(c) The short-run avoided cost energy payments paid to~~  
28 ~~nonutility power generators by electrical corporations shall be~~  
29 ~~based on the clearing price paid by the independent Power~~  
30 ~~Exchange if (1) the commission has issued an order determining~~  
31 ~~that the independent Power Exchange is functioning properly for~~  
32 ~~the purposes of determining the short-run avoided cost energy~~  
33 ~~payments to be made to nonutility power generators, and either~~  
34 ~~(2) the fossil-fired generation units owned, directly or indirectly,~~  
35 ~~by the public utility electrical corporation are authorized to charge~~  
36 ~~market-based rates and the "going forward" costs of those units~~  
37 ~~are being recovered solely through the clearing prices paid by the~~  
38 ~~independent Power Exchange or from contracts with the~~  
39 ~~Independent System Operator, whether those contracts are~~  
40 ~~market-based or based on operating costs for particular~~

1 utility-owned powerplant units and at particular times when  
2 reactive power/voltage support is not yet procurable at  
3 market-based rates at locations where it is needed, and are not  
4 being recovered directly or indirectly through any other source,  
5 or (3) the public utility electrical corporation has divested 90  
6 percent of its gas-fired generation facilities that were operated to  
7 meet load in 1994 and 1995. However, nonutility power generators  
8 subject to this section may, upon appropriate notice to the public  
9 utility electrical corporation, exercise a one-time option to elect  
10 to thereafter receive energy payments based upon the clearing  
11 price from the independent Power Exchange.

12 (d) If a nonutility power generator is being paid short-run  
13 avoided costs energy payments by an electrical corporation by a  
14 firm capacity contract, a forecast as-available capacity contract,  
15 or a forecast as-delivered capacity contract on the basis of the  
16 clearing price paid by the independent Power Exchange as  
17 described in subdivision (c) above, the value of capacity in the  
18 clearing price, if any, shall not be paid to the nonutility power  
19 generator. The value of capacity in the clearing price, if any, equals  
20 the difference between the market clearing customer demand bid  
21 at the level of generation dispatched by the independent Power  
22 Exchange and the highest supplier bid dispatched.

23 (e) Short-run avoided energy cost payments made pursuant to  
24 this section are in addition to contractually specified capacity  
25 payments. Nothing in this section shall be construed to affect,  
26 modify or amend the terms and conditions of existing nonutility  
27 power generators' contracts with respect to the sale of energy or  
28 capacity or otherwise.

29 (f) Nothing in this section shall be construed to limit the level  
30 of transition cost recovery provided to utilities under electric  
31 industry restructuring policies established by the commission.

32 (g) The term "going forward costs" shall include, but not be  
33 limited to, all costs associated with fuel transportation and fuel  
34 supply, administrative and general, and operation and maintenance;  
35 provided that, for purposes of this section, the following shall not  
36 be considered "going forward costs": (1) commission-approved  
37 capital costs for capital additions to fossil-fueled powerplants,  
38 provided that such additions are necessary for the continued  
39 operation of the powerplants utilized to meet load and such  
40 additions are not undertaken primarily to expand, repower or

1 ~~enhance the efficiency of plant operations; or, (2)~~  
2 ~~commission-approved operating costs for particular utility-owned~~  
3 ~~powerplant units and at particular times when reactive~~  
4 ~~power/voltage support is not yet procurable at market-based rates~~  
5 ~~in locations where it is needed, provided that the recovery shall~~  
6 ~~end on December 31, 2001.~~

7 SEC. 19. Nothing in this act precludes a reorganized Power  
8 Exchange from winding up its operations pursuant to a plan in  
9 bankruptcy and pursuant to orders of the Federal Energy  
10 Regulatory Commission.

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