

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1457

Introduced by Assembly Member Huber

January 9, 2012

An act to amend Sections 25301, 25302, and 25334 of the Public Resources Code, and to amend Sections ~~372~~ 343, 372, and 464 of, and to repeal ~~Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of Division 4~~ Sections 334, 335, 336, 337, 338, 339, 340, 341, 341.1, 341.2, 341.3, 341.4, and 341.5 of, the Public Utilities Code, relating to ~~state government~~ *electricity*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1457, as amended, Huber. Electricity Oversight Board.

Existing law establishes the Electricity Oversight Board to oversee the Independent System Operator and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure.

This bill would repeal those provisions, and make various conforming changes.

Existing law, until January 1, 2013, requires the Attorney General to represent the Department of Finance and to succeed to all rights, claims, powers, and entitlements of the Electricity Oversight Board in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis. Existing law additionally prohibits the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

This bill would delete the repeal date of January 1, 2013, thereby making these provisions operative indefinitely.

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

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

1 SECTION 1. Section 25301 of the Public Resources Code is
2 amended to read:
3 25301. (a) At least every two years, the commission shall
4 conduct assessments and forecasts of all aspects of energy industry
5 supply, production, transportation, delivery and distribution,
6 demand, and prices. The commission shall use these assessments
7 and forecasts to develop energy policies that conserve resources,
8 protect the environment, ensure energy reliability, enhance the
9 state’s economy, and protect public health and safety. To perform
10 these assessments and forecasts, the commission may require
11 submission of demand forecasts, resource plans, market
12 assessments, and related outlooks from electric and natural gas
13 utilities, transportation fuel and technology suppliers, and other
14 market participants. These assessments and forecasts shall be done
15 in consultation with the appropriate state and federal agencies
16 including, but not limited to, the Public Utilities Commission, the
17 Office of Ratepayer Advocates, the Air Resources Board, the
18 Independent System Operator, the Department of Water Resources,
19 the California Consumer Power and Conservation Financing
20 Authority, the Department of Transportation, and the Department
21 of Motor Vehicles.
22 (b) In developing the assessments and forecasts prepared
23 pursuant to subdivision (a), the commission shall do all of the
24 following:
25 (1) Provide information about the performance of energy
26 industries.
27 (2) Develop and maintain the analytical capability sufficient to
28 answer inquiries about energy issues from government, market
29 participants, and the public.
30 (3) Analyze and develop energy policies.
31 (4) Provide an analytical foundation for regulatory and policy
32 decisionmaking.
33 (5) Facilitate efficient and reliable energy markets.
34 SEC. 2. Section 25302 of the Public Resources Code is
35 amended to read:

1 25302. (a) Beginning November 1, 2003, and every two years
2 thereafter, the commission shall adopt an integrated energy policy
3 report. This integrated report shall contain an overview of major
4 energy trends and issues facing the state, including, but not limited
5 to, supply, demand, pricing, reliability, efficiency, and impacts on
6 public health and safety, the economy, resources, and the
7 environment. Energy markets and systems shall be grouped and
8 assessed in three subsidiary volumes:

- 9 (1) Electricity and natural gas markets.
10 (2) Transportation fuels, technologies, and infrastructure.
11 (3) Public interest energy strategies.

12 (b) The commission shall compile the integrated energy policy
13 report prepared pursuant to subdivision (a) by consolidating the
14 analyses and findings of the subsidiary volumes in paragraphs (1),
15 (2), and (3) of subdivision (a). The integrated energy policy report
16 shall present policy recommendations based on an indepth and
17 integrated analysis of the most current and pressing energy issues
18 facing the state. The analyses supporting this integrated energy
19 policy report shall explicitly address interfuel and intermarket
20 effects to provide a more informed evaluation of potential tradeoffs
21 when developing energy policy across different markets and
22 systems.

23 (c) The integrated energy policy report shall include an
24 assessment and forecast of system reliability and the need for
25 resource additions, efficiency, and conservation that considers all
26 aspects of energy industries and markets that are essential for the
27 state economy, general welfare, public health and safety, energy
28 diversity, and protection of the environment. This assessment shall
29 be based on determinations made pursuant to this chapter.

30 (d) Beginning November 1, 2004, and every two years thereafter,
31 the commission shall prepare an energy policy review to update
32 analyses from the integrated energy policy report prepared pursuant
33 to subdivisions (a), (b), and (c), or to raise energy issues that have
34 emerged since the release of the integrated energy policy report.
35 The commission may also periodically prepare and release
36 technical analyses and assessments of energy issues and concerns
37 to provide timely and relevant information for the Governor, the
38 Legislature, market participants, and the public.

39 (e) In preparation of the report, the commission shall consult
40 with the following entities: the Public Utilities Commission, the

1 Office of Ratepayer Advocates, the State Air Resources Board,
2 the Independent System Operator, the Department of Water
3 Resources, the California Consumer Power and Conservation
4 Financing Authority, the Department of Transportation, and the
5 Department of Motor Vehicles, and any federal, state, and local
6 agencies it deems necessary in preparation of the integrated energy
7 policy report. To assure collaborative development of state energy
8 policies, these agencies shall make a good faith effort to provide
9 data, assessment, and proposed recommendations for review by
10 the commission.

11 (f) The commission shall provide the report to the Public
12 Utilities Commission, the Office of Ratepayer Advocates, the State
13 Air Resources Board, the Independent System Operator, the
14 Department of Water Resources, the California Consumer Power
15 and Conservation Financing Authority, and the Department of
16 Transportation. For the purpose of ensuring consistency in the
17 underlying information that forms the foundation of energy policies
18 and decisions affecting the state, those entities shall carry out their
19 energy-related duties and responsibilities based upon the
20 information and analyses contained in the report. If an entity listed
21 in this subdivision objects to information contained in the report,
22 and has a reasonable basis for that objection, the entity shall not
23 be required to consider that information in carrying out its
24 energy-related duties.

25 (g) The commission shall make the report accessible to state,
26 local, and federal entities and to the general public.

27 SEC. 3. Section 25334 of the Public Resources Code is
28 amended to read:

29 25334. (a) Upon receipt of an application or upon its own
30 motion for designation of a transmission corridor zone, the
31 commission shall arrange for the publication of a summary of the
32 application in a newspaper of general circulation in each county
33 where the proposed transmission corridor zone would be located,
34 and shall notify all property owners within, or adjacent to, the
35 transmission corridor zone. The commission shall transmit a copy
36 of the application for designation to all cities, counties, and state
37 and federal agencies having an interest in the proposed transmission
38 corridor zone. The commission shall publish the application for
39 designation on its Internet Web site, and notify members of the

1 public that the application is available on the commission’s Internet
2 Web site.

3 (b) As soon as practicable after the receipt of an application or
4 upon its own motion for designation of a transmission corridor
5 zone, the commission shall notify cities, counties, state and federal
6 agencies, and California Native American tribes in whose
7 jurisdictions the proposed transmission corridor zone would be
8 located regarding the proposed transmission corridor zone and the
9 objectives of the most recent strategic plan for the state’s electric
10 transmission grid. The commission’s notice shall solicit information
11 from, and the commission shall confer with, all interested cities,
12 counties, state and federal agencies, and California Native
13 American tribes regarding their land use plans, existing land uses,
14 and other factors in which they have expertise or interest with
15 respect to the proposed transmission corridor zone. The
16 commission shall provide any interested city, county, state or
17 federal agency, California Native American tribe, or member of
18 the public, including any property owner within the proposed
19 transmission corridor zone, ample opportunity to participate in the
20 commission’s review of a proposed transmission corridor zone.

21 (c) The commission shall request affected cities, counties, state
22 and federal agencies, the Independent System Operator, interested
23 California Native American tribes, and members of the public,
24 including any property owner within the proposed transmission
25 corridor zone, to provide comments on the suitability of the
26 proposed transmission corridor zone with respect to environmental,
27 public health and safety, land use, economic, and
28 transmission-system impacts or other factors on which they may
29 have expertise.

30 (d) The commission shall require a person who files an
31 application for the designation of a transmission corridor zone to
32 pay a fee sufficient to reimburse the commission for all costs
33 associated with reviewing the application. If the commission
34 initiates the designation of a transmission corridor zone on its own
35 motion, the commission shall fix the surcharge imposed pursuant
36 to subdivision (b) of Section 40016 of the Revenue and Taxation
37 Code, at a level sufficient to cover the commission’s added costs.

38 (e) Upon receiving the commission’s request for review of a
39 proposed transmission corridor zone, a city or county may request
40 a fee pursuant to Section 25538 to cover for the actual and added

1 costs of this review and the commission shall pay this amount to
2 the city or county.

3 ~~SEC. 4. Article 2 (commencing with Section 334) of Chapter~~
4 ~~2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.~~

5 ~~SEC. 4. Section 334 of the Public Utilities Code is repealed.~~

6 ~~334. The Legislature finds and declares that in order to ensure~~
7 ~~the success of electric industry restructuring, in the transition to a~~
8 ~~new market structure it is important to ensure a reliable supply of~~
9 ~~electricity. Reliable electric service is of paramount importance~~
10 ~~to the safety, health, and comfort of the people of California.~~
11 ~~Transmission connections between electric utilities allow them to~~
12 ~~share generation resources and reduce the number of powerplants~~
13 ~~necessary to maintain a reliable system. The connections between~~
14 ~~utilities also create exposure to events that can cause widespread~~
15 ~~and extended transmission and service outages that reach far~~
16 ~~beyond the originating utility service area. California utilities and~~
17 ~~those in the western United States voluntarily adhere to reliability~~
18 ~~standards developed by the Western Electricity Coordinating~~
19 ~~Council. The economic cost of extended electricity outages, such~~
20 ~~as those that occurred in California and throughout the Western~~
21 ~~Electricity Coordinating Council on July 2, 1996, and August 10,~~
22 ~~1996, to California's residential, commercial, agricultural, and~~
23 ~~industrial customers is significant. The proposed restructuring of~~
24 ~~the electricity industry would transfer responsibility for ensuring~~
25 ~~short- and long-term reliability away from electric utilities and~~
26 ~~regulatory bodies to the Independent System Operator and various~~
27 ~~market-based mechanisms. The Legislature has an interest in~~
28 ~~ensuring that the change in the locus of responsibility for reliability~~
29 ~~does not expose California citizens to undue economic risk in~~
30 ~~connection with system reliability.~~

31 ~~SEC. 5. Section 335 of the Public Utilities Code is repealed.~~

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

38 ~~(a) To oversee the Independent System Operator and the Power~~
39 ~~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 ~~(c) To serve as an appeal board for majority decisions of the~~
5 ~~Independent System Operator governing board, as they relate to~~
6 ~~matters subject to exclusive state jurisdiction, as specified in~~
7 ~~Section 339.~~

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

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

19 *SEC. 6. Section 336 of the Public Utilities Code is repealed.*

20 ~~336. (a) The five-member Oversight Board shall be comprised~~
21 ~~as follows:~~

22 ~~(1) Three members, who are California residents and electricity~~
23 ~~ratepayers, appointed by the Governor from a list jointly provided~~
24 ~~by the California Energy Resources Conservation and Development~~
25 ~~Commission and the Public Utilities Commission, and subject to~~
26 ~~confirmation by the Senate.~~

27 ~~(2) One member of the Assembly appointed by the Speaker of~~
28 ~~the Assembly.~~

29 ~~(3) One member of the Senate appointed by the Senate~~
30 ~~Committee on Rules.~~

31 ~~(b) Legislative members shall be nonvoting members, however,~~
32 ~~they are otherwise full members of the board with all rights and~~
33 ~~privileges pertaining thereto.~~

34 ~~(c) Oversight Board members shall serve three-year terms with~~
35 ~~no limit on reappointment. For purposes of the initial appointments~~
36 ~~set forth in paragraph (1), the Governor shall appoint one member~~
37 ~~to a one-year term, one to a two-year term, and one to a three-year~~
38 ~~term.~~

39 ~~(d) The Governor shall designate one of the voting members as~~
40 ~~the chairperson of the Oversight Board who shall preside over~~

1 meetings and direct the executive director in the routine
2 administration of the Oversight Board's business. The chairperson
3 may designate one of the other voting members to preside over
4 meetings in the absence of the chairperson.

5 (e) Two voting members shall constitute a quorum. Any decision
6 or action of the Oversight Board shall be by majority vote of the
7 voting members.

8 (f) The members of the Oversight Board shall serve without
9 compensation, but shall be reimbursed for all necessary expenses
10 incurred in the performance of their duties.

11 *SEC. 7. Section 337 of the Public Utilities Code is repealed.*

12 ~~337. (a) The Independent System Operator governing board~~
13 ~~shall be composed of a five-member independent governing board~~
14 ~~of directors appointed by the Governor and subject to confirmation~~
15 ~~by the Senate. Any reference in this chapter or in any other~~
16 ~~provision of law to the Independent System Operator governing~~
17 ~~board means the independent governing board appointed under~~
18 ~~this subdivision.~~

19 ~~(b) A member of the independent governing board appointed~~
20 ~~under subdivision (a) may not be affiliated with any actual or~~
21 ~~potential participant in any market administered by the Independent~~
22 ~~System Operator.~~

23 ~~(c) (1) All appointments shall be for three-year terms.~~

24 ~~(2) There is no limit on the number of terms that may be served~~
25 ~~by any member.~~

26 ~~(d) The Oversight Board shall require the articles of~~
27 ~~incorporation and bylaws of the Independent System Operator to~~
28 ~~be revised in accordance with this section, and shall make filings~~
29 ~~with the Federal Energy Regulatory Commission as the Oversight~~
30 ~~Board determines to be necessary.~~

31 ~~(e) For the purposes of the initial appointments to the~~
32 ~~Independent System Operator governing board, as provided in~~
33 ~~subdivision (a), the Governor shall appoint one member to a~~
34 ~~one-year term, two members to a two-year term, and two members~~
35 ~~to a three-year term.~~

36 *SEC. 8. Section 338 of the Public Utilities Code is repealed.*

37 ~~338. The Oversight Board shall have the exclusive right to~~
38 ~~approve procedures and the qualifications for Power Exchange~~
39 ~~governing board members specified in subdivision (d) of Section~~
40 ~~335, all of whom shall be required to be electricity customers in~~

1 the area served by the Power Exchange. The Power Exchange
2 governing board shall include, but not be limited to, representatives
3 of investor-owned electric distribution companies, publicly owned
4 electric distribution companies, nonutility generators, public buyers
5 and sellers, private buyers and sellers, industrial end-users,
6 commercial end-users, residential end-users, agricultural end-users,
7 public interest groups, and nonmarket participant representatives.
8 The structural composition of the Power Exchange governing
9 board existing on July 1, 1999, shall remain in effect until an
10 agreement with a participating state is legally in effect. However,
11 prior to such an agreement, California shall retain the right to
12 change the Power Exchange governing board into a nonstakeholder
13 board. In the event of such a legislative change, revised bylaws
14 shall be filed with the Federal Energy Regulatory Commission
15 under Section 205 of the Federal Power Act (16 U.S.C.A. Sec.
16 824d).

17 *SEC. 9. Section 339 of the Public Utilities Code is repealed.*

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

22 (b) The following matters are subject to California's exclusive
23 jurisdiction:

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

26 (2) Matters pertaining to retail electric service or retail sales of
27 electric energy.

28 (3) Ensuring that the purposes and functions of the Independent
29 System Operator and Power Exchange are consistent with the
30 purposes and functions of California nonprofit public benefit
31 corporations, including duties of care and conflict of interest
32 standards for directors of the corporations.

33 (4) State functions assigned to the Independent System Operator
34 and Power Exchange under state law.

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

36 (6) Appointment of advisory representatives representing state
37 interests.

38 (7) Public access to corporate records.

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

1 ~~(e) Only members of the Independent System Operator~~
2 ~~governing board may appeal a majority decision of the Independent~~
3 ~~System Operator related to any of the matters specified in~~
4 ~~subdivision (b) to the Oversight Board.~~

5 *SEC. 10. Section 340 of the Public Utilities Code is repealed.*

6 ~~340. The Oversight Board shall take the steps that are necessary~~
7 ~~to ensure the earliest possible incorporation of the Independent~~
8 ~~System Operator and the Power Exchange as separately~~
9 ~~incorporated public benefit, nonprofit corporations under the~~
10 ~~Corporations Code.~~

11 *SEC. 11. Section 341 of the Public Utilities Code is repealed.*

12 ~~341. The Oversight Board may do all of the following:~~

13 ~~(a) Meet at the times and places it may deem proper.~~

14 ~~(b) Accept appropriations, grants, or contributions from any~~
15 ~~public source, private foundation, or individual.~~

16 ~~(c) Sue and be sued.~~

17 ~~(d) Contract with state, local, or federal agencies for services~~
18 ~~or work required by the Oversight Board.~~

19 ~~(e) Contract for or employ any services or work required by the~~
20 ~~Oversight Board that in its opinion cannot satisfactorily be~~
21 ~~performed by its staff or by other state agencies.~~

22 ~~(f) Appoint advisory committees from members of other public~~
23 ~~agencies and private groups or individuals.~~

24 ~~(g) As a body, or on the authorization of the Oversight Board,~~
25 ~~as a subcommittee composed of one or more members, hold~~
26 ~~hearings at the times and places it may deem proper.~~

27 ~~(h) Issue subpoenas to compel the production of books, records,~~
28 ~~papers, accounts, reports, and documents and the attendance of~~
29 ~~witnesses.~~

30 ~~(i) Administer oaths.~~

31 ~~(j) Adopt or amend rules and regulations to carry out the~~
32 ~~purposes and provisions of this chapter, and to govern the~~
33 ~~procedures of the Oversight Board.~~

34 ~~(k) Exercise any authority consistent with this chapter delegated~~
35 ~~to it by a federal agency or authorized to it by federal law.~~

36 ~~(l) Make recommendations to the Governor and the Legislature~~
37 ~~at the time or times the Oversight Board deems necessary.~~

38 ~~(m) Participate in proceedings relevant to the purposes of this~~
39 ~~chapter or to the purposes of Division 4.9 (commencing with~~
40 ~~Section 9600) or, as part of any coordinated effort by the state,~~

1 ~~participate in activities to promote the formation of interstate~~
2 ~~agreements to enhance the reliability and function of the electricity~~
3 ~~system and the electricity market.~~

4 ~~(n) Do any and all other things necessary to carry out the~~
5 ~~purposes of this chapter.~~

6 *SEC. 12. Section 341.1 of the Public Utilities Code is repealed.*

7 ~~341.1. Regulations adopted within 120 days of the effective~~
8 ~~date of this section may be adopted as emergency regulations in~~
9 ~~accordance with Chapter 3.5 (commencing with Section 11340)~~
10 ~~of the Government Code, and for the purposes of that chapter,~~
11 ~~including Section 11349.6 of the Government Code, the adoption~~
12 ~~of the regulations shall be considered by the Office of~~
13 ~~Administrative Law to be necessary for the immediate preservation~~
14 ~~of the public peace, health, safety, and general welfare.~~

15 *SEC. 13. Section 341.2 of the Public Utilities Code is repealed.*

16 ~~341.2. The Bagley-Keene Open Meeting Act (Article 9~~
17 ~~(commencing with Section 11120) of Chapter 1 of Part 1 of~~
18 ~~Division 3 of Title 2 of the Government Code) applies to meetings~~
19 ~~of the Oversight Board. In addition to the allowances of that act,~~
20 ~~the Oversight Board may hold a closed session to consider the~~
21 ~~appointment of one or more candidates to the governing board of~~
22 ~~the Power Exchange, deliberate on matters involving the removal~~
23 ~~of a member of the governing board of the Power Exchange, or to~~
24 ~~consider a matter based on information that has received a grant~~
25 ~~of confidential status pursuant to regulations of the Oversight~~
26 ~~Board, provided that any action taken on such a matter shall be~~
27 ~~taken by vote in an open session.~~

28 *SEC. 14. Section 341.3 of the Public Utilities Code is repealed.*

29 ~~341.3. Voting members of the Oversight Board shall be~~
30 ~~required to file financial disclosure statements with the Fair~~
31 ~~Political Practices Commission. The appointing authority for voting~~
32 ~~members shall avoid appointing persons with conflicts of interest.~~

33 *SEC. 15. Section 341.4 of the Public Utilities Code is repealed.*

34 ~~341.4. The Oversight Board shall appoint, and fix the salary~~
35 ~~of, an executive director who shall have charge of administering~~
36 ~~the affairs of the Oversight Board, including entering into contracts,~~
37 ~~subject to the direction and policies of the Oversight Board.~~
38 ~~Notwithstanding Sections 11042 and 11043 of the Government~~
39 ~~Code, the Oversight Board shall appoint an attorney who shall~~
40 ~~advise the Oversight Board and each member and represent the~~

1 Oversight Board as a party in any state or federal action or
2 proceeding related to the purposes of this chapter or to an action
3 of the Oversight Board and who shall perform generally all the
4 duties of attorney to the Oversight Board. For purposes of this
5 section, the Oversight Board may appoint a person exempt pursuant
6 to subdivision (e) of Section 4 of Article VII of the California
7 Constitution. The executive director shall, in accordance with
8 Article VII of the California Constitution and subject to the
9 approval of the Oversight Board, appoint employees as may be
10 necessary to carry out the Oversight Board's duties and
11 responsibilities.

12 *SEC. 16. Section 341.5 of the Public Utilities Code is repealed.*

13 341.5. (a) The Independent System Operator and Power
14 Exchange bylaws shall contain provisions that identify those
15 matters specified in subdivision (b) of Section 339 as matters within
16 state jurisdiction. The bylaws shall also contain provisions which
17 state that California's bylaws approval function with respect to
18 the matters specified in subdivision (b) of Section 339 shall not
19 preclude the Federal Energy Regulatory Commission from taking
20 any action necessary to address undue discrimination or other
21 violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et
22 seq.) or to exercise any other commission responsibility under the
23 Federal Power Act. In taking any such action, the Federal Energy
24 Regulatory Commission shall give due respect to California's
25 jurisdictional interests in the functions of the Independent System
26 Operator and Power Exchange and to attempt to accommodate
27 state interests to the extent those interests are not inconsistent with
28 the Federal Energy Regulatory Commission's statutory
29 responsibilities. The bylaws shall state that any future agreement
30 regarding the apportionment of the Independent System Operator
31 and Power Exchange board appointment function among
32 participating states associated with the expansion of the
33 Independent System Operator and Power Exchange into multistate
34 entities shall be filed with the Federal Energy Regulatory
35 Commission pursuant to Section 205 of the Federal Power Act (16
36 U.S.C.A. Sec. 824d).

37 (b) Any necessary bylaw changes to implement the provisions
38 of Section 335, 337, 338, 339, or subdivision (a) of this section,
39 or changes required pursuant to an agreement as contemplated by
40 subdivision (a) of this section with a participating state for a

1 regional organization, shall be effective upon approval of the
2 respective governing boards and the Oversight Board and
3 acceptance for filing by the Federal Energy Regulatory
4 Commission.

5 *SEC. 17. Section 343 of the Public Utilities Code is amended*
6 *to read:*

7 343. (a) The Attorney General shall represent the Department
8 of Finance and shall succeed to, and may exercise, all rights,
9 claims, powers, and entitlements of the Electricity Oversight Board
10 in any litigation or settlement to obtain ratepayer recovery for the
11 effects of the 2000–02 energy crisis. This section does not require
12 the Attorney General to litigate any claim, or take any other action,
13 as successor to the Electricity Oversight Board.

14 (b) The Attorney General shall not distribute or expend the
15 proceeds of any settlements of claims described in subdivision (a),
16 except in accordance with Article 9.5 (commencing with Section
17 16428.1) of Chapter 2 of Part 2 of Division 4 of Title 2 of the
18 Government Code and Division 27 (commencing with Section
19 80000) of the Water Code.

20 (c) The Attorney General shall not distribute or expend the
21 proceeds of any settlements of claims allocated to the Electricity
22 Oversight Board.

23 ~~(d) This section shall remain in effect only until January 1, 2013,~~
24 ~~and as of that date is repealed, unless a later enacted statute, that~~
25 ~~is enacted before January 1, 2013, deletes or extends that date.~~

26 ~~SEC. 5:~~

27 *SEC. 18. Section 372 of the Public Utilities Code is amended*
28 *to read:*

29 372. (a) It is the policy of the state to encourage and support
30 the development of cogeneration as an efficient, environmentally
31 beneficial, competitive energy resource that will enhance the
32 reliability of local generation supply, and promote local business
33 growth. Subject to the specific conditions provided in this section,
34 the commission shall determine the applicability to customers of
35 uneconomic costs as specified in Sections 367, 368, 375, and 376.
36 Consistent with this state policy, the commission shall provide
37 that these costs shall not apply to any of the following:

38 (1) To load served onsite or under an over the fence arrangement
39 by a nonmobile self-cogeneration or cogeneration facility that was
40 operational on or before December 20, 1995, or by increases in

1 the capacity of a facility to the extent that the increased capacity
2 was constructed by an entity holding an ownership interest in or
3 operating the facility and does not exceed 120 percent of the
4 installed capacity as of December 20, 1995, provided that prior to
5 June 30, 2000, the costs shall apply to over the fence arrangements
6 entered into after December 20, 1995, between unaffiliated parties.
7 For the purposes of this subdivision, “affiliated” means any person
8 or entity that directly, or indirectly through one or more
9 intermediaries, controls, is controlled by, or is under common
10 control with another specified entity. “Control” means either of
11 the following:

12 (A) The possession, directly or indirectly, of the power to direct
13 or to cause the direction of the management or policies of a person
14 or entity, whether through an ownership, beneficial, contractual,
15 or equitable interest.

16 (B) Direct or indirect ownership of at least 25 percent of an
17 entity, whether through an ownership, beneficial, or equitable
18 interest.

19 (2) To load served by onsite or under an over the fence
20 arrangement by a nonmobile self-cogeneration or cogeneration
21 facility for which the customer was committed to construction as
22 of December 20, 1995, provided that the facility was substantially
23 operational on or before January 1, 1998, or by increases in the
24 capacity of a facility to the extent that the increased capacity was
25 constructed by an entity holding an ownership interest in or
26 operating the facility and does not exceed 120 percent of the
27 installed capacity as of January 1, 1998, provided that prior to June
28 30, 2000, the costs shall apply to over the fence arrangements
29 entered into after December 20, 1995, between unaffiliated parties.

30 (3) To load served by existing, new, or portable emergency
31 generation equipment used to serve the customer’s load
32 requirements during periods when utility service is unavailable,
33 provided the emergency generation is not operated in parallel with
34 the integrated electric grid, except on a momentary parallel basis.

35 (4) After June 30, 2000, to any load served onsite or under an
36 over the fence arrangement by any nonmobile self-cogeneration
37 or cogeneration facility.

38 (b) Further, consistent with state policy, with respect to
39 self-cogeneration or cogeneration deferral agreements, the
40 commission shall do the following:

1 (1) Provide that a utility shall execute a final self-cogeneration
2 or cogeneration deferral agreement with any customer that, on or
3 before December 20, 1995, had executed a letter of intent (or
4 similar documentation) to enter into the agreement with the utility,
5 provided that the final agreement shall be consistent with the terms
6 and conditions set forth in the letter of intent and the commission
7 shall review and approve the final agreement.

8 (2) Provide that a customer that holds a self-cogeneration or
9 cogeneration deferral agreement that was in place on or before
10 December 20, 1995, or that was executed pursuant to paragraph
11 (1) in the event the agreement expires, or is terminated, may do
12 any of the following:

13 (A) Continue through December 31, 2001, to receive utility
14 service at the rate and under terms and conditions applicable to
15 the customer under the deferral agreement that, as executed,
16 includes an allocation of uneconomic costs consistent with
17 subdivision (e) of Section 367.

18 (B) Engage in a direct transaction for the purchase of electricity
19 and pay uneconomic costs consistent with Sections 367, 368, 375,
20 and 376.

21 (C) Construct a self-cogeneration or cogeneration facility of
22 approximately the same capacity as the facility previously deferred,
23 provided that the costs provided in Sections 367, 368, 375, and
24 376 shall apply consistent with subdivision (e) of Section 367,
25 unless otherwise authorized by the commission pursuant to
26 subdivision (c).

27 (3) Subject to the firewall described in subdivision (e) of Section
28 367, provide that the ratemaking treatment for self-cogeneration
29 or cogeneration deferral agreements executed prior to December
30 20, 1995, or executed pursuant to paragraph (1) shall be consistent
31 with the ratemaking treatment for the contracts approved before
32 January 1995.

33 (c) The commission shall authorize, within 60 days of the receipt
34 of a joint application from the serving utility and one or more
35 interested parties, applicability conditions as follows:

36 (1) The costs identified in Sections 367, 368, 375, and 376 shall
37 not, prior to June 30, 2000, apply to load served onsite by a
38 nonmobile self-cogeneration or cogeneration facility that became
39 operational on or after December 20, 1995.

1 (2) The costs identified in Sections 367, 368, 375, and 376 shall
2 not, prior to June 30, 2000, apply to any load served under over
3 the fence arrangements entered into after December 20, 1995,
4 between unaffiliated entities.

5 (d) For the purposes of this subdivision, all onsite or over the
6 fence arrangements shall be consistent with Section 218 as it
7 existed on December 20, 1995.

8 (e) To facilitate the development of new microgeneration
9 applications, electrical corporations may apply to the commission
10 for a financing order to finance the transition costs to be recovered
11 from customers employing the applications.

12 (f) To encourage the continued development, installation, and
13 interconnection of clean and efficient self-generation and
14 cogeneration resources, to improve system reliability for consumers
15 by retaining existing generation and encouraging new generation
16 to connect to the electric grid, and to increase self-sufficiency of
17 consumers of electricity through the deployment of self-generation
18 and cogeneration, both of the following shall occur:

19 (1) The commission shall determine if any policy or action
20 undertaken by the Independent System Operator, directly or
21 indirectly, unreasonably discourages the connection of existing
22 self-generation or cogeneration or new self-generation or
23 cogeneration to the grid.

24 (2) If the commission finds that any policy or action of the
25 Independent System Operator unreasonably discourages the
26 connection of existing self-generation or cogeneration or new
27 self-generation or cogeneration to the grid, the commission shall
28 undertake all necessary efforts to revise, mitigate, or eliminate that
29 policy or action of the Independent System Operator.

30 ~~SEC. 6.~~

31 *SEC. 19.* Section 464 of the Public Utilities Code is amended
32 to read:

33 464. (a) Reasonable expenditures by transmission owners that
34 are electrical corporations to plan, design, and engineer
35 reconfiguration, replacement, or expansion of transmission facilities
36 are in the public interest and are deemed prudent if made for the
37 purpose of facilitating competition in electric generation markets,
38 ensuring open access and comparable service, or maintaining or
39 enhancing reliability, whether or not these expenditures are for
40 transmission facilities that become operational.

1 (b) The commission shall ~~jointly~~ facilitate the efforts of the
2 state's transmission owning electrical corporations to obtain
3 authorization from the Federal Energy Regulatory Commission to
4 recover reasonable expenditures made for the purposes stated in
5 subdivision (a).

6 (c) Nothing in this section alters or affects the recovery of the
7 reasonable costs of other electric facilities in rates pursuant to the
8 commission's existing ratemaking authority under this code or
9 pursuant to the Federal Power Act (41 Stat. 1063; 16 U.S.C. Secs.
10 791a, et seq.). The commission may periodically review and adjust
11 depreciation schedules and rates authorized for an electric plant
12 that is under the jurisdiction of the commission and owned by an
13 electrical corporation and periodically review and adjust
14 depreciation schedules and rates authorized for a gas plant that is
15 under the jurisdiction of the commission and owned by a gas
16 corporation, consistent with this code.

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