

AMENDED IN SENATE JULY 2, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Chu

February 5, 2004

An act to ~~repeal Section 367.7 of~~ *amend Sections 216, 331, 335, 339, 340, 341.2, 341.5, 359, and 361 of, and to repeal Sections 338, 355, 356, 367.7, 373, and 376 of,* the Public Utilities Code, relating to electrical restructuring.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, as amended, Chu. Electrical restructuring: Power Exchange.

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of a Power Exchange as an incorporated public benefit nonprofit corporation ~~and requires the Public Utilities Commission to implement a methodology for the Power Exchange to administer energy credit for a customer with a meter that is capable of recording hourly data.~~

This bill would ~~repeal this requirement~~ *delete various provisions pertaining to the creation, duties, and regulatory oversight of the Power Exchange.*

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

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

SECTION 1. *Section 216 of the Public Utilities Code is amended to read:*

216. (a) “Public utility” includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

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

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

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar

resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

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

(g) Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (Chapter 2C (commencing with Section 79) of Title 15 of the United States Code) does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, ~~sales into the Power Exchange referred to in Section 365~~, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

SEC. 2. Section 331 of the Public Utilities Code is amended to read:

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

(a) “Aggregator” means any marketer, broker, public agency, city, county, or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers.

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

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

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

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

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

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

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

SEC. 3. Section 335 of the Public Utilities Code is amended to read:

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

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

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

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

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

~~(e)~~

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

SEC. 4. Section 338 of the Public Utilities Code is repealed.

~~338. The Oversight Board shall have the exclusive right to approve procedures and the qualifications for Power Exchange governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity customers in the area served by the Power Exchange. The Power Exchange governing board shall include, but not be limited to, representatives of investor-owned electric distribution companies, publicly owned electric distribution companies, nonutility generators, public buyers and sellers, private buyers and sellers, industrial end users, commercial end users, residential end users, agricultural end users, public interest groups, and nonmarket participant representatives. The structural composition of the Power Exchange governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Power Exchange governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).~~

SEC. 5. Section 339 of the Public Utilities Code is amended to read:

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

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

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

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

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

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

(5) Open meeting standards and meeting notice requirements.

(6) Appointment of advisory representatives representing state interests.

(7) Public access to corporate records.

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

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

SEC. 6. Section 340 of the Public Utilities Code is amended to read:

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

SEC. 7. Section 341.2 of the Public Utilities Code is amended to read:

341.2. The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the Oversight Board. In addition to the allowances of that act, the Oversight Board may hold a closed session to consider ~~the appointment of one or more candidates to the governing board of the Power Exchange, deliberate on matters involving the removal of a member of the governing board of the Power Exchange, or to consider~~ a matter based on information that has received a grant

1 of confidential status pursuant to regulations of the Oversight
2 Board, provided that any action taken on such a matter shall be
3 taken by vote in an open session.

4 *SEC. 8. Section 341.5 of the Public Utilities Code is amended*
5 *to read:*

6 341.5. (a) The Independent System Operator ~~and Power~~
7 ~~Exchange~~ bylaws shall contain provisions that identify those
8 matters specified in subdivision (b) of Section 339 as matters
9 within state jurisdiction. The bylaws shall also contain provisions
10 which state that California's bylaws approval function with
11 respect to the matters specified in subdivision (b) of Section 339
12 shall not preclude the Federal Energy Regulatory Commission
13 from taking any action necessary to address undue discrimination
14 or other violations of the Federal Power Act (16 U.S.C.A. Sec.
15 791a et seq.) or to exercise any other commission responsibility
16 under the Federal Power Act. In taking any such action, the Federal
17 Energy Regulatory Commission shall give due respect to
18 California's jurisdictional interests in the functions of the
19 Independent System Operator ~~and Power Exchange~~ and to attempt
20 to accommodate state interests to the extent those interests are not
21 inconsistent with the Federal Energy Regulatory Commission's
22 statutory responsibilities. The bylaws shall state that any future
23 agreement regarding the apportionment of the Independent
24 System Operator ~~and Power Exchange~~ board appointment
25 function among participating states associated with the expansion
26 of the Independent System Operator ~~and Power Exchange~~ into a
27 multistate ~~entities~~ entity shall be filed with the Federal Energy
28 Regulatory Commission pursuant to Section 205 of the Federal
29 Power Act (16 U.S.C.A. Sec. 824d).

30 (b) Any necessary bylaw changes to implement the provisions
31 of Section 335, 337, ~~338~~, 339, or subdivision (a) of this section,
32 or changes required pursuant to an agreement as contemplated by
33 subdivision (a) of this section with a participating state for a
34 regional organization, shall be effective upon approval of the
35 respective governing boards and the Oversight Board and
36 acceptance for filing by the Federal Energy Regulatory
37 Commission.

38 *SEC. 9. Section 355 of the Public Utilities Code is repealed.*

39 ~~355. The Power Exchange shall provide an efficient~~
40 ~~competitive auction, open on a nondiscriminatory basis to all~~

1 ~~suppliers, that meets the loads of all exchange customers at~~
2 ~~efficient prices.~~

3 *SEC. 10. Section 356 of the Public Utilities Code is repealed.*

4 ~~356. The Power Exchange governing board may form~~
5 ~~appropriate technical advisory committees comprised of market~~
6 ~~and nonmarket participants to advise the governing board on~~
7 ~~relevant issues.~~

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

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

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

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

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

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

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

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

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

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

SEC. 13. Section 367.7 of the Public Utilities Code is repealed.

SEC. 14. Section 373 of the Public Utilities Code is repealed.

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

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

SEC. 15. Section 376 of the Public Utilities Code is repealed.

~~376. To the extent that the costs of programs to accommodate implementation of direct access, the Power Exchange, and the Independent System Operator, that have been funded by an electrical corporation and have been found by the commission or the Federal Energy Regulatory Commission to be recoverable from the utility's customers, reduce an electrical corporation's opportunity to recover its utility generation-related plant and regulatory assets by the end of the year 2001, the electrical corporation may recover unrecovered utility generation-related plant and regulatory assets after December 31, 2001, in an amount equal to the utility's cost of commission-approved or Federal Energy Regulatory Commission approved restructuring-related implementation programs. An electrical corporation's ability to collect the amounts from retail customers after the year 2001 shall be reduced to the extent the Independent System Operator or the~~

- 1 ~~Power Exchange reimburses the electrical corporation for the~~
- 2 ~~costs of any of these programs.~~

