

AMENDED IN ASSEMBLY JUNE 14, 1999

AMENDED IN SENATE MARCH 11, 1999

SENATE BILL

No. 96

Introduced by Senators Peace and Baca

(Coauthors: Assembly Members House, Leach, Leonard,
and Longville)

December 8, 1998

An act to amend Sections 335, 337, 338, and 339 of, to add Section 341.5 to, and to repeal and add Section 359 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 96, as amended, Peace. Electrical restructuring:
Independent System Operator: Power Exchange.

~~Existing~~

(1) The existing restructuring of the electrical services industry provides for the authorization of direct transactions between electricity suppliers and end use customers and for the creation of an Independent System Operator and Power Exchange. An Oversight Board is also created to, among other things, oversee the Independent System Operator and Power Exchange, and to determine the composition and terms of service and to appoint the members of the governing boards of the Independent System Operator and the Power Exchange. The Oversight Board is the appeal board for majority decisions of the Independent System Operator governing board.

This bill would revise specified provisions relating to the Independent System Operator and the Power Exchange, and to the duties of the Oversight Board. The bill would require the Independent System Operator and the Power Exchange to each be administered by a governing board appointed by the Oversight Board until an agreement with a participating state is in effect. The bill would authorize the Oversight Board to decline to confirm the appointments of specified members of the governing boards of the Independent System Operator and Power Exchange, and would specify that the board has the exclusive right to approve procedures and qualifications for those governing board members, all of whom would be required to be electricity consumers, as specified. The bill would make the Oversight Board the appeal authority for majority decisions of the governing board of the Independent System Operator only with respect to prescribed matters, that would be subject to California's exclusive jurisdiction. The bill would impose prescribed requirements regarding the bylaws of the Independent System Operator and Power Exchange.

(2) Existing law governing electrical restructuring states the intent of the Legislature that California enter into a compact with western region states, and that the compact should require the publicly and investor-owned utilities located in those states that sell energy to California retail customers to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems. Existing law provides for the creation of an Independent System Operator and Power Exchange, with powers and duties as prescribed.

This bill would repeal that intent provision, and, instead, state the intent of the Legislature to provide for the evolution of the Independent System Operator and the Power Exchange into regional organizations to promote the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the Independent System Operator and the Power Exchange to those markets. The bill would state that the preferred means by which that voluntary evolution should occur is through the adoption of a regional compact or other comparable agreement, as described.



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

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

1 SECTION 1. *Section 335 of the Public Utilities Code*
2 *is amended to read:*

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

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

11 (b) To determine the composition and terms of
12 service and to ~~appoint~~ *exercise the exclusive right to*
13 *decline to confirm the appointments of specific* members
14 of the governing boards of the Independent System
15 Operator and the Power Exchange, *as specified in*
16 *subdivision (d).*

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

21 (d) *Those members of the Independent System*
22 *Operator and Power Exchange governing boards whose*
23 *appointments the Oversight Board has the exclusive right*
24 *to decline to confirm include proposed governing board*
25 *members representing agricultural end-users, industrial*
26 *end-users, commercial end-users, residential end-users,*
27 *end-users at large, nonmarket participants, and public*
28 *interest groups.*

29 SEC. 2. *Section 337 of the Public Utilities Code is*
30 *amended to read:*

31 337. The Oversight Board, ~~as the appointing body,~~
32 ~~shall establish nominating~~ *have the exclusive right to*
33 *approve procedures for the election and submission for*
34 *confirmation and the qualifications for Independent*
35 *System Operator governing board members specified in*

1 subdivision (d) of Section 335, all of whom shall be
2 required to be electricity consumers in the area served by
3 the Independent System Operator. The Independent
4 System Operator governing board shall ~~be composed of~~
5 ~~California residents and shall~~ include, but not be limited
6 to, representatives of investor-owned utility transmission
7 owners, publicly owned utility transmission owners,
8 nonutility electricity sellers, public buyers and sellers,
9 private buyers and sellers, industrial end-users,
10 commercial end-users, residential end-users, agricultural
11 end-users, public interest groups, and nonmarket
12 participant representatives. A simple majority of the
13 board shall consist of persons who are themselves
14 unaffiliated with electric generation, transmission or
15 distribution corporations. *The structural composition of*
16 *the Independent System Operator governing board*
17 *existing on July 1, 1999, shall remain in effect until an*
18 *agreement with a participating state is legally in effect.*
19 *However, prior to such an agreement, California shall*
20 *retain the right to change the Independent System*
21 *Operator governing board into a nonstakeholder board.*
22 *In the event of such a legislative change, revised bylaws*
23 *shall be filed with the Federal Energy Regulatory*
24 *Commission under Section 205 of the Federal Power Act*
25 *(16 U.S.C.A. Sec. 824d).*

26 SEC. 3. Section 338 of the Public Utilities Code is
27 amended to read:

28 338. The Oversight Board, ~~as the appointing body,~~
29 ~~shall establish nominating~~ have the exclusive right to
30 approve procedures and the qualifications for Power
31 Exchange governing board members *specified in*
32 *subdivision (d) of Section 335, all of whom shall be*
33 *required to be electricity customers in the area served by*
34 *the Power Exchange.* The Power Exchange governing
35 board shall ~~be composed of California residents and shall~~
36 include, but not be limited to, representatives of
37 investor-owned electric distribution companies, publicly
38 owned electric distribution companies, nonutility
39 generators, public buyers and sellers, private buyers and
40 sellers, industrial end-users, commercial end-users,

1 residential end-users, agricultural end-users, public
2 interest groups, and nonmarket participant
3 representatives. *The structural composition of the Power*
4 *Exchange governing board existing on July 1, 1999, shall*
5 *remain in effect until an agreement with a participating*
6 *state is legally in effect. However, prior to such an*
7 *agreement, California shall retain the right to change the*
8 *Power Exchange governing board into a nonstakeholder*
9 *board. In the event of such a legislative change, revised*
10 *bylaws shall be filed with the Federal Energy Regulatory*
11 *Commission under Section 205 of the Federal Power Act*
12 *(16 U.S.C.A. Sec. 824d).*

13 SEC. 4. Section 339 of the Public Utilities Code is
14 amended to read:

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

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

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

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

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

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

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

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

38 (7) Public access to corporate records.

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

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

6 SEC. 5. Section 341.5 is added to the Public Utilities
7 Code, to read:

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

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

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

5 SEC. 6. Section 359 of the Public Utilities Code is
6 repealed.

7 ~~SEC. 2.—~~

8 SEC. 7. Section 359 is added to the Public Utilities
9 Code, to read:

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

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

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

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

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

36 (3) Mechanisms by which each party state, jointly or
37 separately, can oversee effectively the actions of the
38 Independent System Operator and the Power Exchange
39 as those actions relate to the assurance of electricity
40 system reliability within the party state and to matters

1 that affect electricity sales to the retail customers of the
2 party state or otherwise affect the general welfare of the
3 electricity consumers and the general public of the party
4 state.

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

