

Senate Bill No. 96

CHAPTER 510

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.

[Approved by Governor September 27, 1999. Filed
with Secretary of State September 27, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

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

(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 a Power Exchange. An Electricity Oversight Board is also created to, among other things, oversee the Independent System Operator and the 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 Electricity 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 Electricity 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 Electricity Oversight Board until an agreement with a participating state is in effect. The bill would authorize the Electricity Oversight Board to decline to confirm the appointments of specified members of the governing boards of the Independent System Operator and the 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 Electricity 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 the 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.

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.

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

SECTION 1. 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 boards of the Independent System Operator and the Power Exchange, as specified in subdivision (d).

(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 Independent System Operator and Power Exchange governing boards 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.

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

337. The Oversight Board shall have the exclusive right to approve procedures for the election and submission for confirmation



and the qualifications for Independent System Operator governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity consumers in the area served by the Independent System Operator. The Independent System Operator governing board shall include, but not be limited to, representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, 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. A simple majority of the board shall consist of persons who are themselves unaffiliated with electric generation, transmission or distribution corporations. The structural composition of the Independent System Operator 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 Independent System Operator 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. 3. Section 338 of the Public Utilities Code is amended to read:

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. 4. 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.

(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. 5. Section 341.5 is added to the Public Utilities Code, to read:

341.5. (a) The Independent System Operator and Power Exchange bylaws shall contain provisions that identify those matters specified in subdivision (b) of Section 339 as matters within state jurisdiction. The bylaws shall also contain provisions which state that California's bylaws approval function with respect to the matters specified in subdivision (b) of Section 339 shall not preclude the Federal Energy Regulatory Commission from taking any action necessary to address undue discrimination or other violations of the Federal Power Act (16 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission responsibility under the Federal Power Act. In taking any such action, the Federal Energy Regulatory Commission shall give due respect to California's jurisdictional interests in the functions of the Independent System Operator and Power Exchange and to attempt to accommodate state interests to the extent those interests are not inconsistent with the Federal Energy Regulatory Commission's statutory responsibilities. The bylaws shall state that any future agreement regarding the apportionment of the Independent System Operator and Power Exchange board appointment function among participating states associated with the expansion of the Independent System Operator and Power Exchange into multistate entities shall be filed with the Federal



Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

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

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

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

359. (a) It is 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.

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

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

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

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

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

