

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** June 4, 2002

**To:** The Commission  
(Meeting of June 6, 2002)

**From:** Bill Julian  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SB 1876 (Bowen)** – Electrical restructuring.

**As Amended May 20, 2002**

**RECOMMENDATION:** Support

**SUMMARY:** This bill repeals statutes establishing and empowering the Electricity Oversight Board (EOB), establishes a Ratepayer Refund Account for the deposit of any excessive wholesale power cost refunds recovered by electrical corporations, and makes a variety of other changes. Specifically, this bill repeals legislative findings and declarations codified by AB 1890; provisions establishing and granting powers to the EOB; and provisions specifying recovery of uneconomic costs by investor-owned utilities (IOUs) during the four-year transition period established by AB 1890.

This bill states legislative intent that the western states' regional electricity transmission markets be developed with an eye toward improved market access, preferably through the voluntary adoption of a regional compact. The measure declares that refunds of excessive wholesale power costs recovered by IOUs are ratepayer property, and requires that said refunds be held in trust on ratepayers' behalf. The bill requires that rates for IOU retained generation provide a reasonable opportunity for both cost recovery and return based on those assets' depreciated book value. By this statute, the Commission is authorized to regulate an IOU holding company to enforce any conditions the Commission laid out in approving the formation of said holding company. And finally, the measure requires that any gain or loss on sale of IOU assets included in the IOU's rate base to be allocated exclusively to the IOU's customers.

**ANALYSIS:** The EOB was established by AB 1890 to oversee the Independent System Operator (ISO) and the Power Exchange (PX). As originally conceived, the EOB was to serve as an appellate body for decisions of ISO and PX governing boards. Arguing that

the state's restructuring law was preempted by the Federal Power Act, The Federal Energy Regulatory Commission (FERC) took exception to these provisions and, in 1998, ordered the ISO to change its bylaws to eliminate the EOB's appointment function, ISO bylaw approval and ISO governing board decision appellate authority.

In response, the Legislature passed SB 96 (Peace), Chapter 510, Statutes of 1999, which limited the EOB's confirmation powers to the appointments of customer representatives to the ISO governing board and limited the EOB board's appellate authority to matters exclusively within the jurisdiction of the State.

Reversing the key component of AB 1890 that provides a limited period during which IOUs are authorized to recover stranded costs, this bill repeals now outdated sections of AB 1890 and enacts provisions intended to assure that ratepayers do not suffer unfairly from the current electricity market situation.

**COMMENTS:** The measure alters § 367 of the PU Code to permit the recovery in retail rates of transition costs, power purchase contract obligations and nuclear incremental cost incentive plans.

The author of this measure believes that given certain regulatory actions that increased rates, repeal of the cost recovery sections of AB 1890 are necessary and simply recognize the reality that existing AB 1890 stranded cost recovery provisions are no longer necessary or functional. We concur.

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Date: May 13, 2002

BJ:mal

**BILL LANGUAGE:**

BILL NUMBER: SB 1876 AMENDED  
BILL TEXT

AMENDED IN SENATE MAY 28, 2002  
AMENDED IN SENATE MAY 20, 2002  
AMENDED IN SENATE MAY 1, 2002  
AMENDED IN SENATE APRIL 17, 2002

INTRODUCED BY Senator Bowen  
(Coauthors: Senators Sher and Speier)

FEBRUARY 22, 2002

An act to amend Sections 348, 352, 367, 372, and 377 of, to amend and renumber Section 454.1 of, to add Sections ~~334, 337,~~ 341.5, 367.5, 761.7, and 858 to, to repeal Sections 330, 338, 340, 341.1, 341.5, 346, 367.7, 368, 369, 370, 371, 373, 376, 378, and 397 of, to repeal ~~Article 2 (commencing with Section 334), and~~ Article 5 (commencing with Section 359) of Chapter 2.3 of Part 1 of, and to repeal and add Section 350 of, the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1876, as amended, Bowen. Electrical restructuring.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the Independent System Operator and the Power Exchange in order to ensure the success of the electrical industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. The Oversight Board is granted various powers including, but not limited to, requiring the revision of the bylaws of the Independent System Operator ~~and the approval of the entry of the Independent System Operator into a multistate entity or a regional organization~~.

This bill would repeal those provisions establishing, and granting powers to, the Oversight Board *over the composition of the governing board by the Power Exchange and the incorporation of the Independent System Operator and the Power Exchange*. The bill would require the Independent System Operator to revise its own bylaws ~~and would require legislative approval prior to the entry of the Independent System Operator into a multistate entity or a regional organization~~. Because any violation of the Public Utilities Act is a crime, the bill, by establishing new duties for the Independent System Operator, would impose a state-mandated local program by changing the definition of a crime.

(2) The existing restructuring requires the Public Utilities Commission to establish an effective mechanism that ensures recovery, by electrical corporations, of certain transition costs from their customers, as determined by the commission, including costs for generation related assets and obligations, that were being collected

in commission-approved rates on December 20, 1995, that may become uneconomic as a result of a competitive generation market. The restructuring provides the calculation mechanism on which these costs are to be based and requires that these costs be limited in the case of utility-owned fossil generation. The restructuring requires the costs to be allocated among various classes of customers, rate schedules, and tariff options and requires that there be a firewall segregating the recovery of the costs of competition transition charge exemptions between certain customers.

This bill would delete the provisions providing for a certain calculation mechanism, the provisions limiting the recovery of costs in the case of utility-owned fossil generation, and the provisions requiring a firewall to segregate the recovery of certain costs.

(3) The existing restructuring requires each electrical corporation to propose a cost recovery plan for the recovery of the uneconomic costs. The restructuring authorizes electrical corporations to apply to the commission for an order determining that the uneconomic costs not be collected from a particular class of customer or category of electricity consumption. The restructuring also authorizes electrical corporations to recover utility generation related plant and regulatory assets to the extent that they remain unrecovered after December 31, 2001, due to the electrical corporations' ability to recover costs related to the implementation of direct access, the Power Exchange, and the Independent System Operator. The restructuring also requires the commission to authorize new optional rate schedules and tariffs, including new service offerings, that accurately reflect the loads, locations, conditions of service, cost of service, and market opportunities of customer classes and subclasses.

This bill would delete these provisions.

(4) The existing restructuring requires the commission to ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.

This bill would recast this provision to require the commission to ensure that utility retained generation remain dedicated to service for the benefit of California ratepayers and would define "utility retained generation" as utility owned generation, qualifying facility contracts, and other bilateral contracts entered into prior to January 17, 2001. The bill would exempt the transfer or sale of generation plants that are located outside the state and are owned exclusively by companies not based in the state from these provisions. The bill would require the commission to establish rates designed to provide the public utility electrical corporation with a reasonable opportunity to recover the reasonable costs of producing power and ancillary service from utility retained generation dedicated to the service of bundled service customers, operating and capital costs, as defined, and a reasonable return of and on the electrical corporation's depreciated book cost of investments in retained generation assets, as defined.

(5) The existing restructuring requires the commission to authorize an electrical corporation that is also a gas corporation and served fewer than four million customers as of December 20, 1995, to implement a rate cap mechanism that reflects price changes in the fuel market under certain circumstances.

This bill would delete these provisions.

(6) Under existing law, the Public Utilities Act, the commission is authorized to supervise and regulate every public utility in the state and to take all actions that are necessary and convenient in the exercise of that power and jurisdiction. The act also

establishes the California Consumer Power and Conservation Financing Authority to finance generating facilities and other energy related projects and programs.

This bill would grant the commission jurisdiction over any corporation or holding company, as defined, that owns, controls, operates or manages a public utility, for the limited purpose of monitoring and enforcing any promises, commitments, conditions, or written representations made to the commission or to the ratepayers of the public utility.

This bill would require that any gain or loss on sale associated with the sale, transfer, or disposition of assets be allocated exclusively to the ratepayers serviced by the electrical corporation.

Since a violation of the act is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

This bill would establish a Ratepayer Refund Account for each electrical corporation and would require that all refunds recovered by an electrical corporation resulting from any litigation or agreement relative to the charging of excessive costs for wholesale power by electric power generators and suppliers that have been recovered, or are recoverable, from ratepayers in commission-approved rates be credited to the electrical corporation's account and would provide that those funds be held in trust on behalf of the ratepayers.

(7) This bill would declare that its provisions are severable.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 330 of the Public Utilities Code is repealed.

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

~~SEC. 3. Section 334 is added to the Public Utilities Code, to read:~~

~~334. The Legislature finds and declares that, in order to ensure the success of the electrical industry restructuring in the transition to a new market structure, it is important to ensure a reliable supply of electricity. Reliable electric service is of paramount importance to the safety, health, and comfort of the people of California. Transmission connections among electric utilities allow them to share generation resources and reduce the number of powerplants necessary to maintain a reliable system. The connections among utilities also create exposure to events that can cause widespread and extended transmission and service outages that reach far beyond the originating utility service area. California utilities and those in the western United States voluntarily adhere to reliability standards developed by the Western Systems Coordinating Council. The economic cost of extended electricity outages, such as those that occurred in California and throughout the~~

~~Western Systems Coordinating Council on July 2, 1996, and August 10, 1996, to California's residential, commercial, agricultural, and industrial customers is significant. The proposed restructuring of the electricity industry would transfer responsibility for ensuring short and long term reliability away from electric utilities and regulatory bodies to the Independent System Operator and various market based mechanisms. The Legislature has an interest in ensuring that the change in the locus of responsibility for reliability does not expose California citizens to undue economic risk in connection with system reliability.~~

~~SEC. 4. Section 337 is added to the Public Utilities Code, to read:~~

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

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

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

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

~~(d) The Independent System Operator shall revise its articles of incorporation and bylaws in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as it determines to be necessary.~~

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

~~SEC. 5.~~

~~SEC. 2. 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. 3. Section 340 of the Public Utilities Code is repealed.~~

~~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 incorporated public benefit, nonprofit corporations under the Corporations Code.~~

*SEC. 4. Section 341.1 of the Public Utilities Code is repealed.*

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

*SEC. 5. Section 341.5 of the Public Utilities Code is repealed.*

~~— 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 341.5 is added to the Public Utilities Code, to read:*

341.5. The Independent System Operator bylaws shall contain provisions that identify matters within state jurisdiction. The bylaws shall also contain provisions that state that the approval function of California's bylaws with respect to the matters within state jurisdiction do 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. Sec. 791a et seq.) or to exercise any other commission responsibility under the Federal Power Act. In taking any action, the Federal Energy Regulatory Commission shall give due respect to

California's jurisdictional interests in the functions of the Independent System Operator, and shall 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 board appointment function among participating states associated with the expansion of the Independent System Operator into a multistate entity shall be filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act (16 U.S.C. Sec. 824d).

~~SEC. 6.~~

SEC. 7. Section 346 of the Public Utilities Code is repealed.

~~SEC. 7.~~

SEC. 8. Section 348 of the Public Utilities Code is amended to read:

348. The Independent System Operator shall adopt inspection, maintenance, repair, and replacement standards for the transmission facilities under its control no later than September 30, 1997. The standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of transmission equipment or facility, shall provide for high quality, safe, and reliable service. In adopting its standards, the Independent System Operator shall consider: cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The Independent System Operator shall also adopt standards for reliability, and safety during periods of emergency and disaster. The Independent System Operator shall require each transmission facility owner or operator to report annually on its compliance with the standards. That report shall be made available to the public.

~~SEC. 8.~~

SEC. 9. Section 350 of the Public Utilities Code is repealed.

~~SEC. 9.~~

SEC. 10. Section 350 is added to the Public Utilities Code, to read:

350. (a) It is the intent of the Legislature to provide for the development of regional electricity transmission markets in the western states and to improve the access of consumers served by the Independent System Operator 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.

(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.

(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.

(3) Mechanisms by which each party state, jointly or separately, can oversee effectively the actions of the Independent System Operator as those actions relate to ensuring 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.

~~SEC. 10.~~

SEC. 10.5. Section 352 of the Public Utilities Code is amended to read:

352. The Independent System Operator may not enter into a multistate entity or a regional organization as authorized in Section 350 unless that entry is approved by the ~~Legislature~~

*Oversight Board* .

SEC. 11. Article 5 (commencing with Section 359), of Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.

SEC. 12. Section 367 of the Public Utilities Code is amended to read:

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

and shall be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:

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

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

(c) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003. This subdivision shall become inoperative on

January 1, 2004.

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

SEC. 13. Section 367.5 is added to the Public Utilities Code, to read:

367.5. (a) The commission shall establish a Ratepayer Refund Account for each electrical corporation. All refunds recovered by an electrical corporation, either directly or indirectly by way of offset against amounts otherwise owed by the electrical corporation, resulting from any litigation or agreement relative to the charging of excessive costs for wholesale power by electric power generators and suppliers that have been recovered, or are recoverable, from ratepayers in commission-approved rates, shall be credited to the electrical corporation's account.

(b) All funds held by an electrical corporation that are required by this section to be credited to the Ratepayer Refund Account of the corporation are property of the ratepayers and shall be held in trust on their behalf.

SEC. 14. Section 367.7 of the Public Utilities Code is repealed.

SEC. 15. Section 368 of the Public Utilities Code is repealed.

SEC. 16. Section 369 of the Public Utilities Code is repealed.

SEC. 17. Section 370 of the Public Utilities Code is repealed.

SEC. 18. Section 371 of the Public Utilities Code is repealed.

SEC. 19. Section 372 of the Public Utilities Code is amended to read:

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

(1) To load served onsite or under an over-the-fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the capacity of the facility to the extent that the increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of December 20, 1995, provided that prior to June 30, 2000, the costs shall apply to over-the-fence arrangements entered into after December 20, 1995, between unaffiliated parties. For the purposes of this subdivision, "affiliated" means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another specified entity. "Control" means either of the following:

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

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

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

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

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

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

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

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

(A) Continue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs.

(B) Engage in a direct transaction for the purchase of electricity and pay uneconomic costs consistent with Sections 367 and 375.

(C) Construct a self-cogeneration or cogeneration facility of approximately the same capacity as the facility previously deferred unless otherwise authorized by the commission pursuant to subdivision (c).

(3) Provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1, 1995.

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

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

(2) The costs identified in Sections 367 and 375 shall not, prior to June 30, 2000, apply to any load served under over-the-fence arrangements entered into after December 20, 1995, between

unaffiliated entities.

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

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

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

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

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

SEC. 20. Section 373 of the Public Utilities Code is repealed.

SEC. 21. Section 376 of the Public Utilities Code is repealed.

SEC. 22. Section 377 of the Public Utilities Code is amended to read:

377. (a) The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that utility retained generation remain dedicated for the benefit of the public utility's bundled service customers. Nothing in this section may be construed to compel any electrical corporation to renew or renegotiate an expiring contract. For purposes of this section, "utility retained generation" means utility-owned generation, qualifying facility contracts, and other bilateral contracts entered into prior to January 17, 2001. This section does not apply to the transfer or sale of generation plants that are located outside the state and are owned exclusively by companies not based in the state.

(b) The commission shall establish rates designed to provide the public utility electrical corporation with a reasonable opportunity to recover the reasonable costs of producing power and ancillary services from utility retained generation assets dedicated to the service of bundled service customers. The rates shall provide a reasonable opportunity for the public utility electrical corporation to recover reasonable operating costs and capital costs, including a reasonable return of and on the public utility electrical corporation's depreciated book cost of investments in utility retained generation assets.

(c) "Operating costs" include all customary categories of

operating costs, consistent with historical regulatory practices, including any costs charged by the Independent System Operator to the electrical corporation as the generator or scheduling coordinator of the power.

(d) "The electrical corporation's depreciated book cost of investment in utility retained generation assets" shall initially be set at the amounts recorded on its books of account as of December 31, 2001, as verified and approved by the commission. The cost of major capital additions and improvements to a public utility's retained generation assets shall be reviewed and approved by the commission, in the manner set forth in Sections 1005 and 1005.5, in advance of the public utility being allowed to invest in major capital additions or improvements.

(e) The commission shall continue to determine the appropriate means for recovery of decommissioning costs.

SEC. 23. Section 378 of the Public Utilities Code is repealed.

SEC. 24. Section 397 of the Public Utilities Code is repealed.

SEC. 25. Section 454.1 of the Public Utilities Code, as added by Section 6 of Chapter 1040 of the Statutes of 2000, is amended and renumbered to read:

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

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

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

SEC. 26. Section 761.7 is added to the Public Utilities Code, to read:

761.7. Any electrical corporation or holding company, as defined in Section 79b(a)(7)(A) of Title 15 of the United States Code, that owns, controls, operates, or manages a public utility shall be subject to the jurisdiction, control, and regulation of the commission for the limited purpose of monitoring and enforcing any promises, commitments, conditions, or written representations made to the commission or to the ratepayers of the public utility.

SEC. 27. Section 858 is added to the Public Utilities Code, to read:

858. Any gain or loss on sale associated with the sale, transfer, or disposition of assets that have been included in the rate base of an electrical corporation shall be allocated exclusively to the ratepayers served by the electrical corporation. Gain or loss on sale shall be calculated as the difference between the transfer or

sale price and the net depreciated book value of the assets at the time of the transfer.

SEC. 28. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.