STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 21, 2011

To: The Commission
(Meeting of March 24, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1390 (Committee on Utilities and Commerce) Energy crisis litigation. (Proposed for CPUC Sponsorship)**
As introduced: February 23, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: **PROPOSED SPONSOR**

SUMMARY OF BILL:

This bill, proposed for sponsorship by the California Public Utilities Commission (CPUC), would renew the Attorney General's ability to sign for Electricity Oversight Board (EOB) to effect certain 2000-01 Energy Crisis settlements.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Until defunded in 2008, the EOB was one of the complainants in the Energy Crisis cases, along with the CPUC, Attorney General (AG), PG&E, Southern California Edison, and SDG&E (collectively, the "Cal Parties"). The Cal Parties brought the Energy Crisis cases against approximately 65 energy sellers, have now settled with over half of the sellers, and continue to negotiate settlement with remaining sellers. In 2004, the Cal Parties, including the EOB, entered into an escrow agreement with JP Morgan Chase Bank to handle all future settlements. Under that agreement, the signatures of all Cal Parties (including EOB) are required to issue effective escrow instructions for the purpose of disbursing funds resulting from settlements with individual Energy Crisis-era sellers. This bill allows the AG to sign for the EOB, facilitating settlement of certain Energy Crisis Claims

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Legal Division):

Difficulties in getting EOB signatures on settlement agreements and escrow disbursement instructions began cropping up in 2007, when the EOB began to be dismantled. The Cal Parties attempted in various ways to avoid the need for EOB signatures, but were ultimately unsuccessful. The AG and CPUC also attempted, but because of the lack of records, were unable to determine to what extent ratepayers might be placed at risk by the disappearance of the EOB from Energy Crisis cases, as for example, where the EOB was the sole Cal Party to preserve the right to appeal an adverse FERC decision. As a result of these concerns, the CPUC, AG and DWR were forced to seek legislation, former Public Utility Code sec. 343, allowing the AG to sign for the EOB.

In 2008, the Cal Parties entered into a new escrow agreement that did not have the EOB as a party. The 2008 agreement cover all subsequent settlements, but does not govern the escrows created under the 2004 escrow agreement. The following settlement escrows are governed by the 2004 escrow agreement: Duke, Dynegy, Enron, IdaCorp, Mirant, PacifiCorp, El Paso, PS Colorado, PPM, Reliant and Conectiv. The California Parties settled with the Williams Companies in 2004, and the escrows under that settlement are governed by a separate escrow agreement, implemented by Williams and the Cal Utilities, that predates our 2004 escrow agreement, and the EOB is not a party to the Williams escrow agreement.

At present, therefore, the Cal Parties have no access to the funds contained in the escrows established under the 2004 escrow agreement because no one can sign for the EOB. There is approximately $70M in those accounts. JP Morgan they will not disburse funds from those accounts without a signature from the EOB or a court order.

LEGISLATIVE HISTORY:

Public Utilities Code 343 sunsetted on January 1, 2010. This provision was put into place by AB 1338 (Chapter 760, Statutes of 2008).

FISCAL IMPACT:

None.

STATUS:

AB 1390 is awaiting policy committee referral.

SUPPORT/OPPOSITION:

Support: None on file

Opposition: None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1390 INTRODUCED
BILL TEXT

INTRODUCED BY Committee on Utilities and Commerce (Bradford (Chair), Fletcher (Vice Chair), Buchanan, Fong, Fuentes, Furutani, Gorell, Roger Hernández, Huffman, Ma, Nestande, Skinner, and Swanson)

FEBRUARY 23, 2011

An act to add and repeal Section 343 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1390, as introduced, Committee on Utilities and Commerce. Energy crisis litigation.

Prior law, until January 1, 2010, required 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. That law additionally prohibited the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

This bill, until January 1, 2013, would reenact the above-described requirements and authorizations.

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 343 is added to the Public Utilities Code, to read:

343. (a) The Attorney General shall represent the Department of Finance and shall succeed to, and may exercise, 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. This section does not require the Attorney General to litigate any claim, or take any other action, as successor to the Electricity Oversight Board.

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

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

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