

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 16, 2012

To: The Commission
(Meeting of April 19, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 1533 (Padilla) – Electricity: energy crisis litigation.
As amended: March 27, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT AS SPONSOR

SUMMARY OF BILL:

This bill would renew indefinitely the Attorney General's (AG's) ability to sign for the Electricity Oversight Board (EOB) in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Until defunded in 2008, the EOB was one of the complainants in several Energy Crisis cases, along with the CPUC, 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. AB 1390 (2011) allowed the AG to sign for the EOB, facilitating settlement of certain Energy Crisis claims. However, that bill specified that its provisions would sunset effective January 1, 2013. SB 1533 would eliminate the sunset date, allowing the AG to continue to sign for the EOB for as long as necessary.

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 PUC 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 PUC, 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.

There is no access to the funds contained in the escrows established under the 2004 escrow agreement unless someone can sign for the EOB. Funds total in the millions of dollars and CPUC staff has been told by financial institutions that they will not disburse funds from those accounts without a signature from the EOB or a court order.

The following settlement escrows are governed by the 2004 escrow agreement:

Duke

Dynegy

Enron

IdaCorp

Mirant

PacifiCorp

El Paso

PS Colorado

PPM

Reliant

Conectiv

Note 1: Azusa and Portland would be on this list, but we transferred control over those escrows to the respective settling suppliers, so they are no longer ours to sign.

Note 2: 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.

Note 3: The later 2008 escrow does not pose the same problem, so we are able to gain access to escrow funds related to some, but not all, settlements

PROGRAM BACKGROUND:

Discussed in “Division Analysis” above.

LEGISLATIVE HISTORY:

Statute previously existed as Public Utilities Code 343; sunsetted on January 1, 2010.

AB 1390 (Asm. U&C Committee) from 2011 authorized the AG to sign for the EOB, but that law is set to sunset on January 1, 2013.

Another current piece of legislation, AB 1457 (Huber) would eliminate the EOB from statute but preserves Public Utilities Code 343 in the same form as this bill, thus eliminating the sunset.

FISCAL IMPACT:

None.

STATUS:

SB 1533 is pending hearing in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Lynn Sadler, Director-OGA (916) 327-8441
Nick Zanjani, Legislative Liaison-OGA (916) 327-1418

LS1@cpuc.ca.gov
nkz@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: SB 1533 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 27, 2012

INTRODUCED BY Senator Padilla

FEBRUARY 24, 2012

An act ~~relating to transportation~~ to amend
Section 343 of the Public Utilities Code, relating to electricity

LEGISLATIVE COUNSEL'S DIGEST

SB 1533, as amended, Padilla. ~~Transportation.~~
Electricity: energy crisis litigation.

Existing law, until January 1, 2013, requires 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. Existing law additionally prohibits the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

This bill would delete the repeal of the above-described requirements.

~~Existing law provides various funding sources for transportation purposes.~~

~~This bill would state the intent of the Legislature to enact legislation that would assist local governments with transportation needs, congestion relief, and improving the movement of goods and persons throughout the state.~~

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

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

SECTION 1. Section 343 of the Public Utilities Code is amended 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.~~

~~SECTION 1. — It is the intent of the Legislature to enact legislation that would assist local governments with transportation needs, congestion relief, and improving the movement of goods and persons throughout the state.~~