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CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member Holden
(Coauthors: Assembly Members Patterson and Quirk)
(Coauthors: Senators Stern and Wieckowski)

February 15, 2017

An act to add ~~Section 359.5 to~~, to add Chapter 7 (commencing with Section 8390) to Division 4.1 of, to repeal Section 352 of, to repeal and add Section 359 of, and to repeal Article 5.5 (commencing with Section 359.5) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Holden. Multistate regional transmission system organization: membership.

Existing law provides for the establishment of an Independent System Operator (ISO) as a nonprofit public benefit corporation and requires the ISO to ensure efficient use and reliable operation of the electrical transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the North American Electric Reliability Council. The Clean Energy and Pollution Reduction Act of 2015 provides for the transformation of the ISO into a regional organization, with the approval of the Legislature, pursuant to a specified process. That process provides that modifications to the ISO's governance structure, through changes to its bylaws or other corporate governance documents, will not become effective until the ISO, the Public Utilities Commission (PUC), the State Energy Resources Conservation and Development Commission (Energy Commission), the State Air Resources Board (state board), the Governor, and the Legislature take specified actions on or before January 1, 2019.

This bill would prohibit a California electrical transmission facility owner, a retail seller of electricity, or a local publicly owned electric utility from joining a multistate regional transmission system organization, as defined, unless the bylaws or other organizational documents that govern the organization, and the organization's operations, meet Federal Energy Regulatory Commission requirements and other specified requirements. The bill would require a California transmission owner, retail seller, or local publicly owned electric utility, before joining a multistate regional transmission system organization, to submit the bylaws and other organizational documents that govern the multistate regional transmission system organization to the Energy *Commission* for review. The bill would require the Energy Commission, in consultation with the PUC and the state board, to review those materials for compliance with the bill's requirements. The bill would prohibit a California transmission owner, retail seller, or local publicly owned electric utility from joining the multistate regional transmission system organization unless the Energy Commission has determined that the organization's bylaws and organizational documents meet those requirements. If a California transmission owner, retail seller, or local publicly owned electric utility has joined an independent system operator that becomes a multistate regional transmission organization and the Energy Commission determines that the organization's bylaws and organizational documents do not meet those requirements, the bill would require that the California transmission owner, retail seller, or local

publicly owned electric utility not remain in the organization. The bill would authorize the ISO to develop and submit to the Energy Commission a governance proposal that complies with those ~~requirements~~, *requirements and to provide notice and a copy of this submission to the Legislature and the Governor at the same time as it is submitted to the Energy Commission. The bill would require the Energy Commission, in consultation with the PUC and state board, to review the proposal for compliance with the bill's requirements, and, if the Energy Commission determines that the proposal meets those requirements requirements, to submit the governance proposal to the Governor and to the Legislature with a declaration that the Energy Commission has so found. If notice is delivered by the Energy Commission during a regular session of the Legislature, and if a transmission owner from outside California that is not a participating transmission owner as of January 1, 2019, has entered into an agreement with the ISO indicating an intent to become a participating transmission owner, *the bill would authorize the ISO, beginning 270 days after receipt of notice by the Legislature, to proceed to implement the proposal. The bill would prohibit the ISO from implementing the new governance structure prior to January 1, 2021.**

Existing law establishes the California Renewables Portfolio Standard Program, which requires the PUC to establish a renewables portfolio standard ~~requiring all retail sellers, defined as including electrical corporations, to procure a minimum quantity of electricity products from eligible renewable energy resources, as defined, so that the total kilowatthours of those products sold to their retail end-use customers achieves certain percentages of retail sales by certain dates. The program additionally requires each local publicly owned electric utility to procure a minimum quantity of electricity products from eligible renewable energy resources to achieve the procurement requirements established by the program. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles adopted by the commission, requires that all retail sellers and local publicly owned electric utilities procure a balanced portfolio of electricity products from specified categories of eligible renewable energy resources, known as portfolio content categories. Existing law provides that electricity products may be differentiated for these purposes by their impacts on the operation of the electrical grid in supplying electricity, as well as meeting the requirements of the program.~~

~~If the ISO becomes a multistate regional transmission system organization and thereafter operates an expanded balancing authority area that includes one or more new participating transmission owners located outside of California, this bill would specify that the boundary of the balancing authority area used for determining the portfolio content categories is the boundary of the Independent System Operator's balancing authority area as of December 31, 2018. However, if another balancing authority in California elects to join the ISO's balancing authority area, the bill would add the facilities of that balancing authority to the ISO's balancing authority area for purposes of determining the portfolio content categories.~~

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

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

1 SECTION 1. (a) In enacting this act, it is the intent of the
2 Legislature to enable the transition of the Independent System
3 Operator to a regional governance structure. To that end, it is the
4 intent of the Legislature that the Independent System Operator
5 continue the work it began with stakeholder groups throughout
6 the region that resulted in the “Second Revised Proposal: Principles
7 for Governance of a Regional ISO” published on October 7, 2016
8 (October 2016 Proposal).
9 (b) The October 2016 Proposal included a two-step process for
10 selecting regional board members that consisted of the following:
11 (1) a stakeholder-based nominating committee that selects
12 nominees with the assistance and support of a professional search
13 firm and (2) an approval committee, consisting of the voting
14 members of the western states committee, which would confirm
15 each slate of nominees. It is the intent of the Legislature that the
16 Independent System Operator continue to work with regional
17 stakeholders to develop and refine this proposal, subject to its
18 public process.
19 (c) The October 2016 Proposal proposed that the western states
20 committee would also have primary approval authority over certain
21 regional Independent System Operator proposals on specific topics
22 within the subject areas of transmission cost allocation and resource
23 adequacy. In that proposal, primary authority means the committee
24 will play the lead role for its defined areas of authority, and

1 approval by the committee would be a prerequisite for any filing
2 made by the Independent System Operator with the Federal Energy
3 Regulatory Commission pursuant to Section 205 of the Federal
4 Power Act (16 U.S.C. Section 824d) for approval of tariff
5 provisions in those areas. It is the intent of the Legislature that the
6 Independent System Operator continue to work with regional
7 stakeholders to develop and refine this proposal, subject to its
8 public process.

9 SEC. 2. Section 352 of the Public Utilities Code is repealed.

10 SEC. 3. Section 359 of the Public Utilities Code is repealed.

11 SEC. 4. Section 359 is added to the Public Utilities Code, to
12 read:

13 359. (a) The Independent System Operator's Board of
14 Governors may develop and submit to the Energy Commission a
15 governance proposal that complies with each of the requirements
16 of Section 8392. *The Independent System Operator shall provide*
17 *notice and a copy of this submission to the Legislature and the*
18 *Governor at the same time as it is submitted to the Energy*
19 *Commission.*

20 (b) For purposes of meeting the requirements of subdivision
21 (m) of Section 8392, the proposal shall provide for the
22 establishment of a western states' committee. The committee shall
23 have three representatives from each state that has a transmission
24 owner participating in the Independent System Operator. The
25 representatives from California shall be appointed by the Governor,
26 subject to confirmation by the Senate. The committee shall provide
27 guidance to the Independent System Operator on all matters of
28 interest to more than one state.

29 (c) The open meeting policy and records availability policy of
30 the Independent System Operator in effect as of January 31, 2018,
31 ~~shall~~ meet the requirements of subdivisions (d) and (f) of Section
32 8392.

33 (d) The Energy Commission, in consultation with the Public
34 Utilities Commission and the State Air Resources Board, shall
35 review the governance proposal for compliance with the
36 requirements of Chapter 7 (commencing with Section 8390) of
37 Division 4.1. This review shall include public review of, and
38 written comment on, the proposal and at least one public workshop
39 or hearing at which public comment is received.

1 (e) If the Energy Commission determines that the governance
 2 proposal meets the requirements of Chapter 7 (commencing with
 3 Section 8390) of Division ~~4.1~~ 4.1, then the Energy Commission
 4 shall submit the governance proposal to the Governor and to the
 5 Legislature with a declaration that the Energy Commission has
 6 so found. Notice to the Legislature may be at any time during a
 7 regular session of the Legislature. Not before 270 days after receipt
 8 of notice by the Legislature, provided such notice was delivered
 9 during a regular session of the Legislature, and if a transmission
 10 owner from outside California that is not a participating
 11 transmission owner as of January 1, 2019, has entered into an
 12 agreement with the Independent System Operator indicating its
 13 intent to become a participating transmission owner and the Federal
 14 Energy Regulatory Commission has approved any changes to the
 15 Independent System Operator's tariff necessary for the new
 16 participating transmission owner to join, then the Independent
 17 System Operator may proceed with implementing a governance
 18 structure consistent with the proposal. The new governance
 19 structure shall not be implemented before January 1, 2021. Upon
 20 completing implementation of the governance structure, the
 21 Independent System Operator or its successor shall provide notice
 22 to the Energy Commission.

23 (f) (1) The Energy Commission shall verify that the Independent
 24 System Operator has implemented a governance structure
 25 consistent with this section and, upon so verifying, shall promptly
 26 provide notice to the Secretary of State. Upon receipt of notice by
 27 the Secretary of State, Article 2 (commencing with Section 334),
 28 Section 345.5, and Sections 346 to 349, inclusive, shall become
 29 inoperative.

30 (2) The Energy Commission shall report to the Legislature its
 31 verification and notification to the Secretary of State pursuant to
 32 paragraph (1). The report to the Legislature shall be submitted in
 33 compliance with Section 9795 of the Government Code.

34 ~~SEC. 5.— Section 359.5 is added to the Public Utilities Code, to~~
 35 ~~read:~~

36 ~~359.5.—(a) If the Independent System Operator becomes a~~
 37 ~~multistate regional transmission system organization pursuant to~~
 38 ~~the process set forth in Section 359 and thereafter operates a~~
 39 ~~balancing area that expands beyond the Independent System~~
 40 ~~Operator's balancing authority area as for December 31, 2018, to~~

1 include one or more new participating transmission owners located
 2 outside of California, the balancing authority area boundary used
 3 for determining compliance with the requirements of Section
 4 399.16, except as provided in subdivision (b), shall continue to be
 5 the boundary of the Independent System Operator’s balancing
 6 authority area as of December 31, 2018.

7 (b) If another balancing authority in California elects to join the
 8 Independent System Operator’s balancing authority area, the
 9 balancing authority used for determining compliance with the
 10 requirements of Section 399.16 shall include facilities of that other
 11 balancing authority that are added to the Independent System
 12 Operator’s balancing authority area.

13 ~~SEC. 6.~~

14 ~~SEC. 5.~~ Article 5.5 (commencing with Section 359.5) of
 15 Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code is
 16 repealed.

17 ~~SEC. 7.~~

18 ~~SEC. 6.~~ Chapter 7 (commencing with Section 8390) is added
 19 to Division 4.1 of the Public Utilities Code, to read:

20

21 CHAPTER 7. MULTISTATE REGIONAL TRANSMISSION SYSTEM
 22 ORGANIZATIONS

23

24 8390. For purposes of this chapter, the following terms have
 25 the following meanings:

26 (a) “California participating transmission owner” means a
 27 California transmission owner that has become a participating
 28 transmission owner by turning over operational control of some
 29 or all of its bulk electrical transmission facilities to an independent
 30 system operator or a multistate regional transmission system
 31 organization.

32 (b) “California transmission owner” means an electrical
 33 corporation, local publicly owned electric utility, or other entity
 34 that owns bulk electrical transmission facilities located in
 35 California.

36 (c) Except as provided in Section 8395, “multistate regional
 37 transmission system organization” means an entity that the Federal
 38 Energy Regulatory Commission has determined satisfies the
 39 requirements for operating as an independent system operator or

1 regional transmission organization and that has participating
2 transmission owners from multiple states.

3 (d) “Retail seller” has the same meaning as defined in Section
4 399.12.

5 8391. In order to pursue critical California environmental and
6 human health policy goals and to safeguard existing California
7 authority to protect, preserve, and promote the welfare and
8 well-being of its citizens, a California transmission owner, retail
9 seller, or local publicly owned electric utility shall only join or
10 remain in a multistate regional transmission system organization
11 that maintains, to the fullest extent possible consistent with federal
12 law, market rules and policies that do not conflict with, and allow
13 for consideration of, all of the following:

14 (a) State authority over generation preference, transmission
15 siting, resource portfolios, and resource planning, including, but
16 not limited to, a prohibition on a centralized capacity market in
17 California or other forward procurement of electrical generating
18 capacity that requires capacity to clear at a market clearing price
19 in order to count for resource adequacy purposes.

20 (b) State rules or public policy requirements to provide reliable
21 electrical service for the safety, health, and welfare of the state’s
22 citizenry and economy, to encourage new or clean generation,
23 reductions in emissions of greenhouse gases, or state-assigned
24 policy attributes of electricity generation, such as requirements for
25 California utilities to purchase electricity products from eligible
26 renewable energy resources and from zero-carbon sources.

27 (c) State law and regulation over California utilities, including,
28 but not limited to, those that may affect, but do not set, the rate for
29 the same wholesale sale of electricity at a price different and
30 distinct from the Federal Energy Regulatory Commission approved
31 rate.

32 8392. A California transmission owner, retail seller, or local
33 publicly owned electric utility shall not join a multistate regional
34 transmission system organization as a California participating
35 transmission owner unless the bylaws or other organizational
36 documents that govern the organization and its operations meet
37 Federal Energy Regulatory Commission requirements and do all
38 of the following:

39 (a) Prohibit a member of the governing board of the organization
40 from any affiliation with a participant in any market overseen by

1 the organization. A member of the governing board also shall not
2 have been an employee of a market participant within two years
3 prior to becoming a member of the board.

4 (b) Limit conflicts of interest by prohibiting any member of the
5 governing board from directly owning any interest in energy-related
6 assets that are appreciably affected by the actions of the
7 organization and by requiring annual disclosure of significant
8 financial interests.

9 (c) Provide for and maintain a decisionmaking process that is
10 independent of control by any market participant or class of
11 participants.

12 (d) Provide for and maintain open meeting standards and
13 meeting notice requirements that are consistent with the general
14 policies of the Bagley-Keene Open Meeting Act (Article 9
15 (commencing with Section 11120) of Chapter 1 of Part 1 of
16 Division 3 of Title 2 of the Government Code) and afford the
17 public the greatest possible access to meetings, consistent with
18 other duties of the organization.

19 (e) Subject to reasonable measures to limit the length of
20 meetings or disruptions to meetings, authorize interested members
21 of the public and representatives of customers to participate in
22 person or through remote electronic means in meetings of the
23 governing board and in the meetings of any advisory group to the
24 governing board.

25 (f) Provide public access to the records of the organization
26 consistent with the general policies of the California Public Records
27 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
28 of Title 1 of the Government Code), consistent with the other duties
29 of the organization.

30 (g) Require that the governing documents of the organization
31 be posted and maintained on the organization's public Internet
32 Web site.

33 (h) Protect and preserve a state's authority over matters regulated
34 by the state, including procurement policy, resource planning, and
35 resource or transmission siting within the state.

36 (i) (1) Require retail sellers in each state to meet minimum
37 resource adequacy standards and permit each state to establish
38 resource adequacy standards for its retail sellers that exceed those
39 required by federal law, in the state's discretion.

1 (2) Require a participating local publicly owned electric utility
2 in each state to meet minimum resource adequacy standards and
3 permit the governing board of a participating local publicly owned
4 electric utility to establish resource adequacy standards that exceed
5 those required by federal law, in the discretion of the governing
6 body.

7 (j) Prohibit the multistate regional transmission organization
8 from operating a centralized capacity market in California for the
9 forward procurement of electrical generating capacity that requires
10 capacity to clear at a market clearing price in order to count for
11 resource adequacy purposes.

12 (k) Ensure that the dispatch of resources by the multistate
13 regional transmission organization to serve load in California
14 appropriately reflects the costs for resources to comply with
15 California's climate policies, as implemented by the State Air
16 Resources Board. The multistate regional transmission system
17 organization shall maintain a transparent system for tracking
18 emissions of greenhouse gases resulting from resources dispatched
19 to serve California load.

20 (l) Establish and maintain equitable transmission cost allocation
21 rules through an open stakeholder process approved by the Federal
22 Energy Regulatory Commission. The rules shall ensure that
23 California participating transmission owners receive equitable use
24 of, and just and reasonable compensation for, their past investments
25 in the transmission system assets for which operational control is
26 transferred to a multistate regional transmission system
27 organization.

28 (m) Enhance the competitive structure of the organization by
29 providing for and maintaining an independent market monitor.

30 (n) Establish a clear process, structure, and organizational
31 support for state regulators within the region served by the
32 multistate regional transmission system organization to collaborate
33 and provide guidance to the organization on matters of interest to
34 more than one state, including on issues relating to the
35 organization's independent market monitoring function established
36 by the Federal Energy Regulatory Commission.

37 (o) Enable participation of demand response, storage, and other
38 distributed energy resources in the organization's markets.

39 (p) Provide for and maintain a process for obtaining stakeholder
40 input on policy initiatives requiring approval of the Federal Energy

1 Regulatory Commission that is open to all members of the public
2 and that does not require payment of a membership fee or other
3 charge to participate.

4 (q) Ensure the right of any participating transmission owner to
5 unilaterally withdraw from the multistate regional transmission
6 system organization, with or without cause, upon giving reasonable
7 notice, not to exceed two years.

8 8393. This chapter does not require any California transmission
9 owner, retail seller, or local publicly owned electric utility to join
10 or remain in a multistate regional transmission system organization.

11 8394. (a) A California transmission owner, retail seller, or
12 local publicly owned electric utility shall, before joining a
13 multistate regional transmission system organization, submit the
14 bylaws and other organizational documents that govern the
15 multistate regional transmission system organization to the Energy
16 Commission for review.

17 (b) Unless specified otherwise in Section 8392, the Energy
18 Commission, in consultation with the commission and the State
19 Air Resources Board, shall review the bylaws and organizational
20 documents that govern the multistate regional transmission system
21 operator for compliance with the requirements of Sections 8391
22 and 8392. This review shall include public review of, and written
23 comment on, the materials and at least one public workshop or
24 hearing at which public comment is received.

25 (c) A California transmission owner, retail seller, or local
26 publicly owned electric utility shall not join a multistate regional
27 transmission system organization unless the Energy Commission
28 has determined that the organization's bylaws and organizational
29 documents meet the requirements of Sections 8391 and 8392. If
30 a California transmission owner, retail seller, or local publicly
31 owned electric utility has joined an independent system operator
32 that becomes a multistate regional transmission organization and
33 the Energy Commission determines that the organization's bylaws
34 and organizational documents do not meet the requirements of
35 Sections 8391 and 8392, the California transmission owner, retail
36 seller, or local publicly owned electric utility shall not remain in
37 the organization.

38 8395. The Independent System Operator shall not be deemed
39 to be a multistate regional transmission system organization unless
40 and until it has completed the governance change process

1 requirements of Section 359 and the Energy Commission has
2 provided notice of this change to the Secretary of State pursuant
3 to paragraph (1) of subdivision (e) of that section.

O