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SB-506 Energy crisis litigation. (2019-2020)

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Senate Bill No. 506

CHAPTER 150

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

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 506, Hueso. Energy crisis litigation.

Existing law, until January 1, 2018, 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. Existing law, until January 1, 2018, additionally prohibited the Attorney General from expending the proceeds of any settlements of those claims, except as specified.

This bill would require 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. This bill would additionally prohibit the Attorney General from expending the proceeds of any settlements of those claims, except as specified. The bill would state the intent of the Legislature to affirm the Attorney General's uninterrupted authority to continue acting on behalf of the Electricity Oversight Board for cases involving the 2000–02 energy crisis.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The Legislature created the Electricity Oversight Board (EOB) in 1996 to address issues arising from the restructured electricity industry and markets in California. The EOB board consisted of five members: three appointed by the Governor, one appointed by the Speaker of the Assembly, and one appointed by the Senate Committee on Rules.

(2) In 2001, in the midst of the California energy crisis, the Legislature directed the EOB to investigate any matter related to the wholesale market for electricity to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the availability of electricity and electrical transmission and related costs during periods of peak demand.

(3) The Attorney General has taken a lead role in pursuing a series of cases at the Federal Energy Regulatory Commission (FERC) and on appeal seeking refunds from all of the energy sellers who manipulated the market or benefited from inflated prices during the energy crisis. In 2002, the state's Public Utilities Commission (PUC) and the EOB each filed a complaint with

the FERC seeking to abrogate multiple long-term contracts between energy sellers and the Department of Water Resources' California Energy Resources Scheduling (CERS) Division, the state agency authorized by emergency legislation in January 2001 to enter into long-term energy contracts after skyrocketing energy prices during the crisis pushed the state's investor-owned electrical corporations into insolvency and limited their ability to purchase electricity for delivery to consumers in California. Through these cases and settlements reached with energy sellers, the Attorney General and affiliated parties have recovered \$8.7 billion for the state and California ratepayers, including \$1.523 billion from Enron Corporation.

(4) In 2009, during the Great Recession and state budget crisis, Governor Schwarzenegger defunded the EOB, and the Legislature, through Section 343 of the Public Utilities Code, directed the Attorney General to succeed the EOB in any litigation or settlement to obtain ratepayer recovery for the effects of the 2000–02 energy crisis. Section 343 included a two-year sunset date, which was subsequently extended by Assembly Bill No. 1390 (Chapter 179 of the Statutes of 2011), Senate Bill No. 1533 (Chapter 226 of the Statutes of 2012), and Assembly Bill No. 1524 (Chapter 382 of the Statutes of 2015). Based on this legislation, the Attorney General stepped into the shoes of the EOB for litigation and settlement purposes relating to recovery of refunds arising out of the energy crisis.

(5) Due to a number of reasons, many of the energy crisis cases before the FERC are still pending, including the long-term contract proceeding in which the Attorney General, who continues to act on behalf of the EOB, is seeking approximately \$2.8 billion dollars in cost recovery for the state and California ratepayers. The Attorney General is seeking approximately another \$200 million from sellers in the other cases before the FERC who have yet to settle.

(b) It is the intent of the Legislature to affirm the Attorney General's uninterrupted authority to continue acting on behalf of the EOB for cases involving the 2000–02 energy crisis.

SEC. 2. 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.