

107TH CONGRESS  
1ST SESSION

# S. 764

To direct the Federal Energy Regulatory Commission to impose just and reasonable load-differentiated demand rates or cost-of-service based rates on sales by public utilities of electric energy at wholesale in the western energy market, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 24, 2001

Mrs. FEINSTEIN (for herself, Mr. SMITH of Oregon, Mr. BINGAMAN, Mrs. MURRAY, Ms. CANTWELL, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To direct the Federal Energy Regulatory Commission to impose just and reasonable load-differentiated demand rates or cost-of-service based rates on sales by public utilities of electric energy at wholesale in the western energy market, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. FINDINGS.**

4       Congress finds that—

5               (1) prices in the spot market for electric energy  
6       in the western energy market have consistently re-

1       mained at levels that are multiples of energy prices  
2       prevailing before 2000;

3               (2) the price increases began in California and  
4       spread throughout the western energy market;

5               (3) the Federal Energy Regulatory Commission,  
6       in an order issued November 1, 2000, found that  
7       prices in California and the western energy market  
8       are unjust and unreasonable; and

9               (4) the high and volatile prices for natural gas  
10      are reflected in the costs of producing electricity.

11 **SEC. 2. DEFINITIONS.**

12      In this Act:

13               (1) COMMISSION.—The term “Commission”  
14      means the Federal Energy Regulatory Commission.

15               (2) COST-OF-SERVICE BASED RATE.—The term  
16      “cost-of-service based rate” means a rate, charge, or  
17      classification for the sale of electric energy that is  
18      equal to—

19                       (A) all the reasonable variable costs for  
20      producing the electric energy;

21                       (B) all the reasonable fixed costs for pro-  
22      ducing the electric energy;

23                       (C) a reasonable risk premium or return  
24      on invested capital; and

1 (D) all other reasonable costs associated  
 2 with the production, acquisition, conservation,  
 3 and transmission of electric power.

4 (3) LOAD-DIFFERENTIATED DEMAND RATE.—  
 5 The term “load-differentiated demand rate” means  
 6 a rate, charge, or classification for the sale of elec-  
 7 tric energy that reflects differences in the demand  
 8 for electric energy during various times of day,  
 9 months, seasons, or other time periods.

10 (4) PUBLIC UTILITY.—The term “public util-  
 11 ity” has the meaning given the term in section 201  
 12 of the Federal Power Act (16 U.S.C. 824).

13 (5) WESTERN ENERGY MARKET.—The term  
 14 “western energy market” means the area within the  
 15 United States that is covered by the Western Sys-  
 16 tems Coordinating Council.

17 **SEC. 3. WHOLESALE ELECTRIC ENERGY RATES OF REGU-**  
 18 **LATED ENTITIES IN THE WESTERN ENERGY**  
 19 **MARKET.**

20 (a) IMPOSITION OF WHOLESALE ELECTRIC ENERGY  
 21 RATES.—Not later than 60 days after the date of enact-  
 22 ment of this Act, the Commission shall impose just and  
 23 reasonable load-differentiated demand rates or cost-of-  
 24 service based rates on sales by public utilities of electric  
 25 energy at wholesale in the western energy market.

1 (b) LIMITATIONS.—

2 (1) IN GENERAL.—A load-differentiated de-  
3 mand rate or cost-of-service based rate shall not  
4 apply to a sale of electric energy at wholesale for  
5 delivery in a State that, after the date of enactment  
6 of this Act—

7 (A) prohibits the State public utility com-  
8 mission from approving the passing through to  
9 retail consumers of cost-of-service based rates  
10 or load-differentiated demand rates approved by  
11 the Commission; or

12 (B) imposes a price limit on the sale of  
13 electric energy at retail that precludes a public  
14 utility (or any entity that is authorized to pur-  
15 chase electricity on behalf of a public utility or  
16 a State) from making a payment when due to  
17 any entity within the western energy market  
18 from which the public utility purchases electric  
19 energy for resale at retail within the western  
20 energy market.

21 (2) NO ORDERS TO SELL WITHOUT A REASON-  
22 ABLE ASSURANCE OF PAYMENT.—Notwithstanding  
23 section 302 of the Natural Gas Policy Act of 1978  
24 (15 U.S.C. 3362), section 202(c) of the Federal  
25 Power Act (16 U.S.C. 824a(c)), or section 101 of

1 the Defense Production Act of 1950 (50 U.S.C.  
 2 App. 2071), neither the Secretary of Energy nor the  
 3 Commission may issue an order that requires a sell-  
 4 er of electric energy or natural gas to sell, on or  
 5 after the date of enactment of this Act, electric en-  
 6 ergy or natural gas to a buyer in a State described  
 7 in paragraph (1) unless there is a reasonable assur-  
 8 ance that the Commission determines is sufficient to  
 9 ensure that the seller will be paid—

10 (A) the full purchase price when due, as  
 11 agreed to by the buyer and seller; or

12 (B) if the buyer and seller are unable to  
 13 agree on a price—

14 (i) a fair and equitable price for nat-  
 15 ural gas, as determined by the President  
 16 under section 302 of the Natural Gas Pol-  
 17 icy Act of 1978 (15 U.S.C. 3362); or

18 (ii) a just and reasonable price for  
 19 electric energy, as determined by the Sec-  
 20 retary of Energy or the Commission, as  
 21 appropriate, under section 202(c) of the  
 22 Federal Power Act (16 U.S.C. 824a(c)).

23 (3) REQUIREMENT TO MEET IN-STATE DE-  
 24 MAND.—Notwithstanding any other provision of law,  
 25 a State public utility commission in the western en-

1       ergy market may prohibit any utility subject to the  
 2       jurisdiction of the State public utility commission  
 3       from making any sale of electric energy to a pur-  
 4       chaser outside the service area of the utility at any  
 5       time at which the State public utility commission  
 6       has reason to believe that delivery of the electric en-  
 7       ergy would impair the ability of the utility to meet,  
 8       at or after the time of the delivery, the demand for  
 9       electric energy in the service area of the utility.

10       (c) **AUTHORITY OF STATE REGULATORY AUTHORI-**  
 11 **TIES.**—This section does not diminish or have any other  
 12 effect on the authority of a State regulatory authority (as  
 13 defined in section 3 of the Federal Power Act (16 U.S.C.  
 14 796)) to regulate rates and charges for the sale of electric  
 15 energy to consumers, including the authority to determine  
 16 the manner in which wholesale rates shall be passed  
 17 through to consumers (including the setting of tiered pric-  
 18 ing, real-time pricing, and baseline rates).

19       (d) **REPEAL.**—Effective March 1, 2003, this section  
 20 is repealed, and any load-differentiated demand rate or  
 21 cost-of-service based rate imposed under this section that  
 22 is then in effect shall no longer be effective.

23 **SEC. 4. NATURAL GAS RATES.**

24       (a) **INAPPLICABILITY OF WAIVER OF MAXIMUM RATE**  
 25 **CEILING PROVISION TO TRANSPORTATION OF NATURAL**

1 GAS INTO THE STATE OF CALIFORNIA.—Effective begin-  
 2 ning on the date of enactment of this Act, paragraph (i)  
 3 of section 284.8 of title 18, Code of Federal Regulations,  
 4 shall not apply to the transportation of natural gas into  
 5 the State of California from outside the State.

6 (b) DISCLOSURE OF COMMODITY PORTION AND  
 7 TRANSPORTATION PORTION OF SALE PRICE IN BUNDLED  
 8 NATURAL GAS TRANSACTIONS.—

9 (1) DEFINITION OF BUNDLED TRANSACTION.—

10 In this subsection, the term “bundled transaction”  
 11 means a transaction for the sale of natural gas in  
 12 which the sale price includes both the cost of the  
 13 natural gas and the cost of transporting the natural  
 14 gas.

15 (2) DISCLOSURE.—Exercising authority under  
 16 section 4 of the Natural Gas Act (15 U.S.C. 717c),  
 17 not later than 60 days after the date of enactment  
 18 of this Act, the Commission shall promulgate a regu-  
 19 lation that requires any person that sells natural gas  
 20 in a bundled transaction under which the natural  
 21 gas is to be transported into the State of California  
 22 from outside the State to file with the Commission,  
 23 not later than a date specified by the Commission,  
 24 a statement that discloses—

1 (A) the portion of the sale price that is at-  
 2 tributable to the price paid by the seller for the  
 3 natural gas; and

4 (B) the portion of the sale price that is at-  
 5 tributable to the price paid for transportation of  
 6 the natural gas.

7 **SEC. 5. SENSE OF THE SENATE REGARDING THE BONNE-**  
 8 **VILLE POWER ADMINISTRATION.**

9 It is the sense of the Senate that the Bonneville  
 10 Power Administration should—

11 (1) take steps to reduce its wholesale electric  
 12 power purchase needs in the rate period beginning  
 13 October 1, 2001; and

14 (2) undertake other actions to minimize its po-  
 15 tential wholesale electric rate increase due to take  
 16 effect October 1, 2001.

17 **SEC. 6. EFFECT OF ACT.**

18 Nothing in this Act—

19 (1) affects any energy production that, as of  
 20 the date of enactment of this Act, is not online and  
 21 for which an application for a permit to produce  
 22 electricity has not been filed;

23 (2) affects any contract for the purchase of  
 24 electric energy except a contract for a spot market  
 25 purchase; or



1           (3) prohibits a State or other entity from ap-  
2           pearing in a Federal court in any instance in which  
3           it is alleged that the Commission is not enforcing  
4           the Federal Power Act (16 U.S.C. 791a et seq.).

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