

107TH CONGRESS  
1ST SESSION

# H. R. 1974

To amend the Federal Power Act to provide the Federal Energy Regulatory Commission with authority to order certain refunds of electric rates, to require the Commission to expand its market mitigation plan, and to provide the Secretary of Energy with authority to revoke the market mitigation plan under certain circumstances, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2001

Mr. OSE (for himself and Mr. HORN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Power Act to provide the Federal Energy Regulatory Commission with authority to order certain refunds of electric rates, to require the Commission to expand its market mitigation plan, and to provide the Secretary of Energy with authority to revoke the market mitigation plan under certain circumstances, 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. SHORT TITLE.**

4       This Act may be cited as the “Western States Energy  
5       Consumer Protection Act of 2001”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) undue reliance upon the purchase of power  
4 from the spot market has resulted in a dysfunctional  
5 energy market reflected in high spot market prices;

6 (2) the State of California should encourage  
7 further use of long-term and bilateral contracts and  
8 reduce reliance on the spot market; and

9 (3) it is not in the interest of the residents of  
10 the State of California for the State to create and  
11 operate a statewide power authority.

12 **SEC. 3. DEFINITIONS.**

13 As used in this Act:

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

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

19 (3) WHOLESALE ELECTRIC UTILITY.—The term  
20 “wholesale electric utility” means a person or entity  
21 (including any Federal, State or local department,  
22 agency, or instrumentality) selling electric power at  
23 wholesale in the western energy market

24 (4) WESTERN ENERGY MARKET.—The term  
25 “western energy market” means the area within the

1 United States that is encompassed by the Western  
2 Systems Coordinating Council (“WSCC”).

3 (5) SPOT MARKET.—The terms “spot market”  
4 and “real time market” mean the market for electric  
5 energy to be delivered within the next 24-hour pe-  
6 riod, or the spot market as otherwise defined by the  
7 Commission.

8 (6) RE-MARKETER.—The term “re-marketer”  
9 means any person who purchases electric energy at  
10 wholesale for resale at wholesale.

11 **SEC. 4. MARKET MONITORING AND MITIGATION PLAN.**

12 (a) EXPANSION TO WSCC REGION.—The Federal  
13 Energy Regulatory Commission shall issue such orders as  
14 may be necessary to apply to all public utility sales of elec-  
15 tric energy in interstate commerce in the western energy  
16 market the market monitoring and mitigation plan for the  
17 California market (as adopted by order issued on April  
18 26, 2001 (95 FERC 61,115)), that is based not on inflexi-  
19 ble price caps, but on the use of competitive bids to rep-  
20 licate competitive pricing.

21 (b) SCOPE OF PLAN.—

22 (1) IN GENERAL.—The orders issued as pro-  
23 vided in subsection (a) shall also modify the market  
24 monitoring and mitigation plan to remove the limita-  
25 tions in such plan regarding emergencies in Cali-

1       fornia when reserves are 7.5 percent or less so that  
2       such plan will apply to all sales by public utilities in  
3       interstate commerce in the spot market at all times,  
4       including sales by re-marketers.

5           (2) CERTAIN STATES EXCLUDED.—The market  
6       mitigation plan referred to in this section shall not  
7       apply to sales of electric energy at wholesale for de-  
8       livery in a State that, after the enactment of this  
9       Act—

10           (A) prohibits the State public utility com-  
11       mission from approving the passing through to  
12       retail consumers of the costs of electric power;  
13       or

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

23           (c) DEPARTMENT OF ENERGY AUTHORITY.—The  
24       Secretary of Energy shall have the authority to terminate  
25       the market mitigation plan referred to in this section at

1 any time that the Secretary determines that such plan is  
2 resulting in decreased supply or increased demand for  
3 electric energy in the States covered by the Western States  
4 Coordinating Council.

5 (d) APPLICATION TO NONJURISDICTIONAL UTILI-  
6 TIES.—It is the intent of Congress that each wholesale  
7 electric utility that is not a public utility subject to the  
8 jurisdiction of the Commission shall voluntarily comply  
9 with the market monitoring and mitigation plan referred  
10 to in subsection (a), as modified by the Commission under  
11 this section.

12 (e) SUNSET.—The requirements of this section shall  
13 cease to apply as of September 30, 2002.

14 **SEC. 5. NATURAL GAS RATES.**

15 (a) INAPPLICABILITY OF WAIVER OF MAXIMUM RATE  
16 CEILING PROVISION TO TRANSPORTATION OF NATURAL  
17 GAS INTO THE STATE OF CALIFORNIA.—Effective with  
18 respect to contracts entered into after the date of enact-  
19 ment of this Act, paragraph (i) of section 284.8 of title  
20 18, Code of Federal Regulations, shall not apply to the  
21 transportation of natural gas into the State of California  
22 from outside the State.

23 (b) DISCLOSURE OF COMMODITY PORTION AND  
24 TRANSPORTATION PORTION OF SALE PRICE IN BUNDLED  
25 NATURAL GAS TRANSACTIONS.—

1 (1) DEFINITION OF BUNDLED TRANSACTION.—

2 In this subsection, the term “bundled transaction”  
3 means a transaction for the sale of natural gas in  
4 which the sale price includes both the cost of the  
5 natural gas and the cost of transporting the natural  
6 gas.

7 (2) DISCLOSURE.—Exercising authority under  
8 section 4 of the Natural Gas Act (15 U.S.C. 717c),  
9 not later than 60 days after the date of enactment  
10 of this Act, the Commission shall publish notice of  
11 a proposed rulemaking, and not later than 180 days  
12 after such date of enactment issue a rule, that re-  
13 quires any person that sells natural gas in a bundled  
14 transaction under which the natural gas is to be  
15 transported into the State of California from outside  
16 the State to file with the Commission, not later than  
17 a date specified by the Commission, a statement  
18 that discloses—

19 (A) the portion of the sale price that is at-  
20 tributable to the price paid by the seller for the  
21 natural gas; and

22 (B) the portion of the sale price that is at-  
23 tributable to the price paid for transportation of  
24 the natural gas.

1 **SEC. 6. NO ORDERS TO SELL GAS OR ELECTRICITY WITH-**  
2 **OUT A REASONABLE ASSURANCE OF PAY-**  
3 **MENT.**

4 Notwithstanding section 302 of the Natural Gas Pol-  
5 icy Act of 1978 (15 U.S.C. 3362), section 202(c) of the  
6 Federal Power Act (16 U.S.C. 824a(c)), or section 101  
7 of the Defense Production Act of 1950 (50 U.S.C. App.  
8 2071), neither the Secretary of Energy nor the Commis-  
9 sion may issue an order that requires a seller of electric  
10 energy or natural gas to sell, on or after the date of enact-  
11 ment of this Act, electric energy or natural gas to a buyer  
12 in any State in the western region unless there is a reason-  
13 able assurance that the Commission determines is suffi-  
14 cient to ensure that the seller will be paid—

15 (1) the full purchase price when due, as agreed  
16 to by the buyer and seller; or

17 (2) if the buyer and seller are unable to agree  
18 on—

19 (A) a fair and equitable price for natural  
20 gas, as determined by the President under sec-  
21 tion 302 of the Natural Gas Policy Act of 1978  
22 (15 U.S.C. 3362); or

23 (B) a just and reasonable price for electric  
24 energy, as determined by the Secretary of En-  
25 ergy or the Commission, as appropriate, under

1           section 202(c) of the Federal Power Act (16  
2           U.S.C. 824a(c)).

3 **SEC. 7. REQUIREMENT TO MEET IN-STATE DEMAND.**

4           Notwithstanding any other provision of law, a State  
5 public utility commission in the western energy market  
6 may prohibit any utility subject to the jurisdiction of the  
7 State public utility commission from making any sale of  
8 electric energy to a purchaser outside the service area of  
9 the utility at any time at which the State public utility  
10 commission has reason to believe that delivery of the elec-  
11 tric energy would impair the ability of the utility to meet,  
12 at or after the time of the delivery, the demand for electric  
13 energy in the service area of the utility.

14 **SEC. 8. WHOLESALE RATE REFUND AUTHORITY.**

15           Section 206(b) of the Federal Power Act (16 U.S.C.  
16 824e(b)) is amended as follows:

17           (1) In the second sentence, strike “shall not be  
18 earlier than the date 60 days after the filing of such  
19 complaint nor later than 5 months after the expira-  
20 tion of such 60-day period” and insert “shall be the  
21 date of the filing of such complaint”.

22           (2) In the third sentence, strike “shall not be  
23 earlier than the date 60 days after the publication  
24 by the Commission of notice of its intention to ini-  
25 tiate such proceeding nor later than 5 months after

1 the expiration of such 60-day period” and insert  
2 “shall be the date of publication by the Commission  
3 of notice of its intention to initiate such proceeding”.

4 (3) Beginning in the seventh sentence, strike  
5 “through a date fifteen months after such refund ef-  
6 fective date” and all that follows down through  
7 “prior to the conclusion of the proceeding” and in-  
8 sert “through the conclusion of the proceeding”.

9 (4) In the last sentence, after “interest” insert  
10 “and any penalties the Commission deems appro-  
11 priate”.

12 **SEC. 9. FERC REPORT ON SCHEDULED OUTAGES.**

13 Within 180 days after the enactment of this Act, the  
14 Commission shall undertake a study of the means avail-  
15 able to improve Commission oversight to investigate and  
16 coordinate scheduled outages by electric powerplants. The  
17 Commission shall submit a report to Congress containing  
18 the findings of such study.

19 **SEC. 10. EFFECT OF ACT.**

20 Nothing in this Act—

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

1           (2) affects any contract for the purchase of  
2       electric energy except a contract for a spot market  
3       purchase;

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

8           (4) diminishes or has any other effect on the  
9       authority of a State regulatory authority (as defined  
10      in section 3 of the Federal Power Act (16 U.S.C.  
11      796)) to regulate rates and charges for the sale of  
12      electric energy to consumers, including the authority  
13      to determine the manner in which wholesale rates  
14      shall be passed through to consumers (including the  
15      setting of tiered pricing, real-time pricing, and base-  
16      line rates).

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