

110TH CONGRESS
1ST SESSION

H. R. 594

To regulate over-the-counter trading of energy derivatives.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2007

Mr. STUPAK (for himself, Mr. DINGELL, Mr. LARSON of Connecticut, Mr. HINCHEY, Mr. ALLEN, Mrs. CAPPS, Mr. DEFazio, Ms. SCHAKOWSKY, Mr. CONYERS, Mr. PASCRELL, Mr. GRIJALVA, Ms. JACKSON-LEE of Texas, Mr. TIERNEY, Mr. KILDEE, Ms. SCHWARTZ, Mr. CHANDLER, Mr. MICHAUD, Mrs. DAVIS of California, and Mr. BAIRD) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To regulate over-the-counter trading of energy derivatives.

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 “Prevent Unfair Manip-
5 ulation of Prices Act of 2007”.

6 **SEC. 2. OVER-THE-COUNTER TRANSACTIONS IN ENERGY** 7 **COMMODITIES.**

8 (a) DEFINITIONS.—Section 1a of the Commodity Ex-
9 change Act (7 U.S.C. 1a) is amended by adding at the
10 end the following:

1 “(34) INCLUDED ENERGY TRANSACTION.—The
2 term ‘included energy transaction’ means a contract,
3 agreement, or transaction in an energy commodity
4 that is—

5 “(A)(i) executed or traded on an electronic
6 trading facility; and

7 “(ii) entered into on a principal-to-prin-
8 cipal basis solely between persons that are eligi-
9 ble commercial entities at the time the persons
10 enter into the agreement, contract, or trans-
11 action; or

12 “(B)(i) executed or traded not on or
13 through a trading facility; and

14 “(ii) entered into solely between persons
15 that are eligible contract participants at the
16 time the persons enter into the agreement, con-
17 tract, or transaction, regardless of the means of
18 execution of the agreement, contract, or trans-
19 action.

20 “(35) ENERGY COMMODITY.—

21 “(A) IN GENERAL.—The term ‘energy
22 commodity’ means a commodity (other than an
23 excluded commodity, a metal, or an agricultural
24 commodity) that is used as a source of energy.

1 “(B) INCLUSIONS.—The term ‘energy com-
2 modity’ includes—

3 “(i) coal;

4 “(ii) crude oil, gasoline, diesel fuel,
5 heating oil, and propane;

6 “(iii) electricity; and

7 “(iv) natural gas.

8 “(36) ELECTRONIC ENERGY TRADING FACIL-
9 ITY.—The term ‘electronic energy trading facility’
10 means an electronic trading facility on or through
11 which included energy transactions are traded or ex-
12 ecuted.”.

13 (b) OFF-EXCHANGE TRANSACTIONS IN ENERGY
14 COMMODITIES.—Section 2(g) of the Commodity Exchange
15 Act (7 U.S.C. 2(g)) is amended—

16 (1) by inserting “or an energy commodity”
17 after “agricultural commodity”;

18 (2) by redesignating paragraphs (1) through
19 (3) as subparagraphs (A) through (C), respectively;

20 (3) by striking “No provision” and inserting
21 the following:

22 “(1) IN GENERAL.—No provision”; and

23 (4) by adding at the end the following:

24 “(2) TRANSACTIONS IN ENERGY COMMOD-
25 ITIES.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C) and subsection (h)(7), nothing in this Act applies to an included energy transaction.

“(B) PROHIBITED CONDUCT.—

“(i) IN GENERAL.—An included energy transaction shall be subject to—

“(I) sections 5b, 12(e)(2)(B), and 22(a)(4); and

“(II) the prohibitions in sections 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6c, 6d, 8a, and 9(a)(2).

“(ii) TRANSACTIONS EXEMPTED BY COMMISSION ACTION.—Notwithstanding any exemption by the Commission under section 4(c), an included energy transaction shall be subject to the sections specified in clause (i) of this subparagraph, subparagraph (C), and subsection (h)(7).

“(C) REPORTING AND RECORDKEEPING REQUIREMENTS.—

“(i) IN GENERAL.—An eligible contract participant that enters into or executes an included energy transaction that performs, or together with other such

1 transactions performs, a significant price
2 discovery function in the cash market for
3 an energy commodity or in any other mar-
4 ket for agreements, contracts, or trans-
5 actions relating to an energy commodity,
6 and an eligible commercial entity that en-
7 ters into or executes an included energy
8 transaction described in section 1a(34)(A)
9 shall—

10 “(I) provide to the Commission
11 on a timely basis the information re-
12 quired under clause (ii); and

13 “(II)(aa) consistent with section
14 4i, maintain books and records relat-
15 ing to each included energy trans-
16 action, for a period of at least 5 years
17 after the date of the transaction, in
18 such form as the Commission shall re-
19 quire; and

20 “(bb) keep the books and records
21 open to inspection by any representa-
22 tive of the Commission or the Attor-
23 ney General.

24 “(ii) REQUIRED INFORMATION.—

1 “(I) IN GENERAL.—The Commis-
2 sion shall require that such informa-
3 tion regarding included energy trans-
4 actions be provided to the Commission
5 as the Commission considers nec-
6 essary to assist in detecting and pre-
7 venting price manipulation.

8 “(II) INFORMATION TO BE IN-
9 CLUDED.—Such information shall in-
10 clude information regarding large
11 trading positions obtained through 1
12 or more included energy transactions
13 that involve—

14 “(aa) substantial quantities
15 of the commodity in the cash
16 market; or

17 “(bb) substantial positions,
18 investments, or trades in agree-
19 ments or contracts related to en-
20 ergy commodities.

21 “(III) MANNER OF COMPLI-
22 ANCE.—The Commission shall specify
23 when and how such information shall
24 be provided and maintained by eligible

1 contract participants and eligible com-
2 mercial entities.

3 “(IV) PRICE DISCOVERY TRANS-
4 ACTIONS.—

5 “(aa) IN GENERAL.—In
6 specifying the information to be
7 provided under this paragraph,
8 the Commission shall identify the
9 transactions or class of trans-
10 actions that the Commission con-
11 siders to perform a significant
12 price discovery function.

13 “(bb) CONSIDERATIONS.—In
14 determining which included en-
15 ergy transactions perform a sig-
16 nificant price discovery function,
17 the Commission shall consider
18 the extent to which—

19 “(AA) standardized
20 agreements are used to exe-
21 cute the transactions;

22 “(BB) the transactions
23 involve standardized types or
24 measures of a commodity;

1 “(CC) the prices of the
2 transactions are reported to
3 third parties, published, or
4 disseminated;

5 “(DD) the prices of the
6 transactions are referenced
7 in other transactions; and

8 “(EE) other factors
9 considered appropriate by
10 the Commission.

11 “(V) PERSONS FILING.—

12 “(aa) IN GENERAL.—The
13 Commission, in its discretion,
14 may allow large trader position
15 reports required to be provided
16 by an eligible commercial entity
17 to be provided by an electronic
18 energy trading facility if the eli-
19 gible commercial entity author-
20 izes the facility to provide such
21 information on its behalf.

22 “(bb) INFORMATION AND
23 ENFORCEMENT.—Nothing in an
24 authorization under item (aa)
25 shall impair the ability of the

1 Commission to obtain informa-
2 tion from an eligible commercial
3 entity or otherwise enforce this
4 Act.

5 “(VI) REGULATIONS.—Not later
6 than 180 days after the date of enact-
7 ment of this paragraph, the Commis-
8 sion shall issue a notice of proposed
9 rulemaking, and not later than 1 year
10 after the date of enactment of this
11 paragraph, the Commission shall pro-
12 mulgate final regulations, specifying
13 the information to be provided and
14 maintained under this subpara-
15 graph.”.

16 **SEC. 3. ELECTRONIC TRADING FACILITIES FOR ENERGY**
17 **COMMODITIES.**

18 Section 2(h) of the Commodity Exchange Act (7
19 U.S.C. 2(h)) is amended—

20 (1) in paragraph (1), by inserting after “an ex-
21 empt commodity” the following: “, other than an en-
22 ergy commodity,”;

23 (2) in paragraph (3), by inserting after “an ex-
24 empt commodity” the following: “, other than an en-
25 ergy commodity,”; and

1 (3) by adding at the end the following:

2 “(7) ENERGY TRANSACTIONS.—

3 “(A) IN GENERAL.—To the extent that the
4 Commission determines to be appropriate under
5 subparagraph (C), an electronic energy trading
6 facility shall—

7 “(i) be subject to the requirements of
8 section 5a, to the extent provided in sec-
9 tions 5a(g) and 5d;

10 “(ii)(I) consistent with section 4i,
11 maintain books and records relating to the
12 business of the electronic energy trading
13 facility, including books and records relat-
14 ing to each transaction in such form as the
15 Commission may require; and

16 “(II) make the books and records re-
17 quired under this section available to rep-
18 resentatives of the Commission and the At-
19 torney General for inspection for a period
20 of at least 5 years after the date of each
21 included energy transaction;

22 “(iii) make available to the public in-
23 formation on trading volumes, settlement
24 prices, open interest (where applicable),
25 and opening and closing ranges (or daily

1 highs and lows, as appropriate) for in-
2 cluded energy transactions; and

3 “(iv) provide the information to the
4 Commission in such form and at such
5 times as the Commission may require.

6 “(B) APPLICABILITY OF OTHER PROVI-
7 SIONS.—

8 “(i) PARAGRAPH (5).—An electronic
9 energy trading facility shall comply with
10 paragraph (5).

11 “(ii) PARAGRAPH (6).—Paragraph (6)
12 shall apply with respect to a subpoena
13 issued to any foreign person that the Com-
14 mission believes is conducting or has con-
15 ducted transactions on or through an elec-
16 tronic energy trading facility.

17 “(C) REGULATIONS.—Not later than 180
18 days after the date of enactment of this para-
19 graph, the Commission shall issue a notice of
20 proposed rulemaking, and not later than 1 year
21 after the date of enactment of this paragraph,
22 the Commission shall promulgate final regula-
23 tions, specifying the information to be provided,
24 maintained, or made available to the public
25 under subparagraphs (A) and (B).

1 “(8) NONDISCLOSURE OF PROPRIETARY INFOR-
 2 MATION.—In carrying out paragraph (7) and sub-
 3 section (g)(2), the Commission shall not—

4 “(A) require the real-time publication of
 5 proprietary information;

6 “(B) prohibit the commercial sale or li-
 7 censing of real-time proprietary information; or

8 “(C) publicly disclose information regard-
 9 ing market positions, business transactions,
 10 trade secrets, or names of customers, except as
 11 provided in section 8.”.

12 **SEC. 4. NO EFFECT ON OTHER AUTHORITY.**

13 (a) NO EFFECT ON FERC AUTHORITY.—Nothing
 14 contained in this title shall affect the jurisdiction of the
 15 Federal Energy Regulatory Commission with respect to
 16 the authority of the Federal Energy Regulatory Commis-
 17 sion under the Federal Power Act (16 U.S.C. 791a et
 18 seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or
 19 other law to obtain information or otherwise carry out the
 20 responsibilities of the Federal Energy Regulatory Commis-
 21 sion.

22 (b) NO EFFECT ON EXCLUDED COMMODITIES.—The
 23 amendments made by this title have no effect on the regu-
 24 lation of excluded commodities under the Commodity Ex-
 25 change Act (7 U.S.C. 1a et seq.).

1 (c) NO EFFECT ON METALS.—The amendments
2 made by this title have no effect on the regulation of met-
3 als under the Commodity Exchange Act (7 U.S.C. 1a et
4 seq.).

5 **SEC. 5. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

6 Section 4b of the Commodity Exchange Act (7 U.S.C.
7 6b) is amended by striking subsection (a) and inserting
8 the following:

9 “(a) PROHIBITIONS.—

10 “(1) IN GENERAL.—It shall be unlawful (A) for
11 any person, in or in connection with any order to
12 make, or the making of, any contract of sale of any
13 commodity for future delivery or in interstate com-
14 merce, that is made, or to be made, on or subject
15 to the rules of a designated contract market, for or
16 on behalf of any other person, or (B) for any person,
17 in or in connection with any order to make, or the
18 making of, any contract of sale of any commodity
19 for future delivery or other agreement, contract or
20 transaction subject to paragraphs (1) and (2) of sec-
21 tion 5a(g), that is made, or to be made, for or on
22 behalf of or with, any other person, other than on
23 or subject to the rules of a designated contract mar-
24 ket—

1 “(i) to cheat or defraud or attempt to
2 cheat or defraud the other person;

3 “(ii) willfully to make or cause to be made
4 to such other person any false report or state-
5 ment or willfully to enter or cause to be entered
6 for the other person any false record;

7 “(iii) willfully to deceive or attempt to de-
8 ceive the other person by any means whatsoever
9 in regard to any order or contract or the dis-
10 position or execution of any order or contract,
11 or in regard to any act of agency performed,
12 with respect to any order or contract for (or, in
13 the case of a contract described in subpara-
14 graph (B), with the other person) such person;
15 or

16 “(iv)(I) to bucket an order represented by
17 the person as an order to be executed, for or on
18 behalf of the other person, on an organized ex-
19 change; or

20 “(II) to—

21 “(aa) fill an order by offset against
22 the order or orders of the other person; or

23 “(bb) willfully and knowingly and
24 without the prior consent of the other per-
25 son, to—

1 “(AA) become the buyer in re-
 2 spect to any selling order of the other
 3 person; or

4 “(BB) become the seller in re-
 5 spect to any buying order of the other
 6 person,

7 if the order is to be executed on or subject to
 8 the rules of a designated contract market.

9 “(2) LIMITATION.—This subsection does not
 10 obligate any person, in connection with a transaction
 11 in a contract of sale of a commodity for future deliv-
 12 ery with another person, to disclose to any other
 13 person nonpublic information that may be material
 14 to the market price of the commodity or transaction,
 15 except as necessary to make any statement made to
 16 the other person in connection with the transaction
 17 not misleading in any material respect.”.

18 **SEC. 6. CRIMINAL AND CIVIL PENALTIES.**

19 (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-
 20 tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,
 21 15) is amended in clause (3) of the tenth sentence—

22 (1) by inserting “(A)” after “assess such per-
 23 son”; and

24 (2) by inserting after “each such violation” the
 25 following: “, or (B) in any case of manipulation of,

1 or attempt to manipulate, the price of any com-
2 modity, a civil penalty of not more than the greater
3 of \$1,000,000 or triple the monetary gain to such
4 person for each such violation,”.

5 (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-
6 tion 6(d) of the Commodity Exchange Act (7 U.S.C. 13b)
7 is amended in the first sentence—

8 (1) by striking “paragraph (a) or (b) of section
9 9 of this Act” and inserting “subsection (a), (b), or
10 (f) of section 9”; and

11 (2) by striking “said paragraph 9(a) or 9(b)”
12 and inserting “subsection (a), (b), or (f) of section
13 9”.

14 (c) NONENFORCEMENT OF RULES OF GOVERNMENT
15 OR OTHER VIOLATIONS.—Section 6b of the Commodity
16 Exchange Act (7 U.S.C. 13a) is amended—

17 (1) in the first sentence, by inserting before the
18 period at the end the following: “, or, in any case
19 of manipulation of, or an attempt to manipulate, the
20 price of any commodity, a civil penalty of not more
21 than \$1,000,000 for each such violation”; and

22 (2) in the second sentence, by inserting before
23 the period at the end the following: “, except that
24 if the failure or refusal to obey or comply with the
25 order involved any offense under section 9(f), the

1 registered entity, director, officer, agent, or employee
 2 shall be guilty of a felony and, on conviction, shall
 3 be subject to penalties under section 9(f)”.

4 (d) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—
 5 Section 6c(d) of the Commodity Exchange Act (7 U.S.C.
 6 13a–1(d)) is amended by striking “(d)” and all that fol-
 7 lows through the end of paragraph (1) and inserting the
 8 following:

9 “(d) CIVIL PENALTIES.—(1) In any action brought
 10 under this section, the Commission may seek and the
 11 court shall have jurisdiction to impose, on a proper show-
 12 ing, on any person found in the action to have committed
 13 any violation—

14 “(A) a civil penalty in the amount of not more
 15 than the greater of \$100,000 or triple the monetary
 16 gain to the person for each violation; or

17 “(B) in any case of manipulation of, or an at-
 18 tempt to manipulate, the price of any commodity, a
 19 civil penalty in the amount of not more than the
 20 greater of \$1,000,000 or triple the monetary gain to
 21 the person for each violation.”.

22 (e) VIOLATIONS GENERALLY.—Section 9(a) of the
 23 Commodity Exchange Act (7 U.S.C. 13) is amended—

24 (1) by striking “(or \$500,000 in the case of a
 25 person who is an individual)”;

1 (2) by striking “five years” and inserting “10
2 years”; and

3 (3) in paragraph (2), by striking “false or mis-
4 leading or knowingly inaccurate reports” and insert-
5 ing “knowingly false, misleading, or inaccurate re-
6 ports”.

7 **SEC. 7. CONFORMING AMENDMENTS.**

8 (a) Section 2 of the Commodity Exchange Act (7
9 U.S.C. 2) is amended—

10 (1) in subsection (d)(1), by striking “section
11 5b” and inserting “section 5a(g), 5b,”;

12 (2) in subsection (e)(1), by inserting “(1)” after
13 “(g)”; and

14 (3) in subsection (i)—

15 (A) in paragraph (1)—

16 (i) by striking “No provision” and in-
17 serting “IN GENERAL.—Subject to sub-
18 sections (g)(2) and (h)(7), no provision”;
19 and

20 (ii) in subparagraph (A), by inserting
21 “(1)” after “2(g)”; and

22 (B) in paragraph (2), by striking “No pro-
23 vision” and inserting “IN GENERAL.—Subject
24 to subsections (g)(2) and (h)(7), no provision”.

1 (b) Section 4i of the Commodity Exchange Act (7
2 U.S.C. 6i) is amended in the first sentence by inserting
3 “, or pursuant to an exemption under section 4(c)” after
4 “transaction execution facility”.

5 (c) Section 8a(9) of the Commodity Exchange Act (7
6 U.S.C. 12a(9)) is amended—

7 (1) by inserting “or an electronic energy trad-
8 ing facility” after “direct the contract market”;

9 (2) by inserting after “liquidation of any fu-
10 tures contract” the following: “or included energy
11 transaction”; and

12 (3) by inserting “or an electronic energy trad-
13 ing facility” after “given by a contract market”.

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