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(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. INSLEE (for himself, Mr. BACA, Mr. BECERRA, Mr. BAIRD, Mr. BERMAN, Mrs. CAPPS, Mr. CAPUANO, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. ESHOO, Mr. FARR of California, Mr. FILNER, Ms. HARMAN, Mr. HONDA, Ms. HOOLEY of Oregon, Mr. LANTOS, Mr. LARSEN of Washington, Ms. LOFGREN, Ms. LEE, Mr. MATSUI, Mr. MCDERMOTT, Mr. GEORGE MILLER of California, Ms. MILLENDER-MCDONALD, Mrs. NAPOLITANO, Ms. PELOSI, Ms. SCHAKOWSKY, Mr. SHERMAN, Mr. SMITH of Washington, Ms. SOLIS, Mr. STARK, Mr. THOMPSON of California, Ms. WATERS, Mr. WAXMAN, and Mr. WU) introduced the following bill; which was referred to the Committee on _____

A BILL

To stabilize the dysfunctional wholesale power market in the Western United States, 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,*



1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Energy Price and Eco-
3 nomic Stability Act of 2001”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that:

6 (1) Reliable and affordable energy is necessary
7 to ensure economic health and public safety.

8 (2) The western states have historically worked
9 well together to ensure that energy is sufficient to
10 meet demand at a reasonable cost.

11 (3) Despite the best efforts of the western
12 states, an emergency energy situation now exists.

13 (4) The Federal government should augment
14 the states’ response to the emergency by protecting
15 consumers from excessive wholesale rates.

16 (5) Several factors have led to the existing
17 emergency, including the following: a flawed deregulation
18 plan in the State of California, the existence
19 of market power among generators in the western
20 region, increased natural gas costs, drought in the
21 Northwest, rapid increases in the populations of
22 western states, poor regional and national forecasting
23 of energy needs, decreased operation reserves
24 due to a lack of investment in new generation.



1 (6) Federal and State efforts to protect the en-
2 vironment have not significantly contributed to these
3 problems.

4 (7) The region's energy needs can be met while
5 protecting the environment and public health.

6 (8) On November 1, 2000, and again on De-
7 cember 15, 2000, the Federal Energy Regulatory
8 Commission found that wholesale electricity rates in
9 the State of California were and have the potential
10 to be unjust and unreasonable under the Federal
11 Power Act.

12 (9) the Federal Energy Regulatory Commission
13 issued orders on March 9, 2001, March 14, 2001,
14 and March 16, 2001 alleging that generators had
15 overcharged California utilities more than \$130 mil-
16 lion.

17 (10) The Federal Energy Regulatory Commis-
18 sion orders only reflect a fraction of total over-
19 charges and do not reflect the full period during
20 which overcharges may have occurred.

21 (11) The California Independent System Oper-
22 ator reports that generators may have overcharged
23 California utilities by more than \$6 billion in the pe-
24 riod between May 2000 and February 2001.



1 (12) The market conditions that have existed in
2 California, Washington, and Oregon for months now
3 exist in neighboring states, where electricity costs
4 are also rising.

5 (13) Unless the Federal Energy Regulatory
6 Commission intervenes in the western wholesale elec-
7 tricity market, nothing will constrain the wholesale
8 price of electricity and the situation this coming
9 summer may worsen by orders of magnitude.

10 (14) On March 9, 2001, the Governors of Cali-
11 fornia, Oregon, and Washington wrote to the Sec-
12 retary of Energy and the Chairman of the Federal
13 Energy Regulatory Commission to request that cost-
14 of-service based rates be imposed in the western re-
15 gion.

16 (15) the Federal Energy Regulatory Commis-
17 sion has failed to fulfill its obligations under the
18 Federal Power Act to act in the best interest of con-
19 sumers by mandating just and reasonable wholesale
20 rates in the western energy market.

21 **SEC. 3. WHOLESALE ELECTRICITY RATES IN THE WESTERN**
22 **UNITED STATES.**

23 (a) DEFINITIONS.—For purposes of this Act:

24 (1) The term “Commission” means the Federal
25 Energy Regulatory Commission.



1 (2) The term “cost-of-service-based rate”
2 means a rate, charge, or classification for the sale of
3 electric energy that is equal to the sum of the fol-
4 lowing:

5 (A) All variable and fixed costs of gener-
6 ating such electric energy.

7 (B) Either—

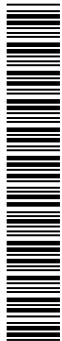
8 (i) a reasonable risk premium, or

9 (ii) a return on invested capital used
10 to generate and transmit such electric en-
11 ergy that reflects customary returns during
12 the period 1994 through 1999.

13 (C) Other reasonable costs associated with
14 the acquisition, conservation, and transmission
15 of such electric energy.

16 (3) The term “new generation facility” means
17 any facility generating electric energy that did not
18 generate electric energy at any time prior to Janu-
19 ary 1, 2001.

20 (b) EXERCISE OF AUTHORITY TO ESTABLISH COST-
21 BASED RATES.—Within 30 days after the enactment of
22 this Act, the Commission shall issue an order establishing
23 cost-of-service-based rates for electric energy sold at
24 wholesale subject to the jurisdiction of the Commission
25 under the Federal Power Act for use in that portion of



1 the United States that is covered by the Western Systems
2 Coordinating Council of the North American Electric Reli-
3 ability Council.

4 (c) SUNSET.—Subsection (b) shall not apply to sales
5 of electric energy after March 1, 2003.

6 (d) NEW FACILITIES NOT COVERED.—The rates re-
7 quired under subsection (b) shall not apply to any sale
8 of electric energy generated by any new generation facility.

9 (e) ENFORCEMENT.—

10 (1) STATE CAUSE OF ACTION.—If a State de-
11 termines that a wholesale rate applicable to delivery
12 of electricity within the State is not in compliance
13 with subsection (b) or is not just and reasonable, the
14 State may bring an action in the appropriate United
15 States district court. Upon adequate showing that a
16 rate is not in compliance with subsection (b) or is
17 not just and reasonable, the court shall order re-
18 funds or other relief as appropriate.

19 (2) CIVIL PENALTIES.—Any person who vio-
20 lates any requirement of this section shall be subject
21 to civil penalties equal to 3 times the value of the
22 amount involved in such violation. The Commission
23 shall assess such penalties, after notice and oppor-
24 tunity for public hearing, in accordance with the
25 same provisions as are applicable under section



1 31(d) of the Federal Power Act in the case of civil
2 penalties assessed under such section 31.

3 (f) REFUNDS.—In the case of sales of electric energy
4 for use in that portion of the United States that is covered
5 by the Western Systems Coordinating Council of the
6 North American Electric Reliability Council the Commis-
7 sion shall order the refund of any rates and charges that
8 were not just and reasonable and that applied to sales be-
9 tween June 1, 2000 and the enactment of this Act. Any
10 affected State may bring an action in the appropriate
11 United States district court to enforce this subsection.

12 (g) SAVINGS PROVISIONS.—Nothing in this section
13 shall affect any authority of the Commission existing be-
14 fore the enactment of this section.

15 **SEC. 4. GUARANTEE OF PAYMENT REQUIRED FOR CERTAIN**
16 **EMERGENCY POWER SALES.**

17 Section 202(c) of the Federal Power Act (16 U.S.C.
18 825(c)) is amended by adding the following at the end
19 thereof: “Except during the continuance of any war, no
20 order may be issued under this subsection unless the pay-
21 ment of compensation or reimbursement to the person
22 subject to such order is fully guaranteed by the United
23 States Government or by a State government.”.



1 **SEC. 5. SEVERABILITY.**

2 If any provision of this Act is found to be unenforce-
3 able or invalid, no other provision of this Act shall be in-
4 validated thereby.

