

107TH CONGRESS  
1ST SESSION

# H. R. 1468

To stabilize the dysfunctional wholesale power market in the Western United States, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. INSLEE (for himself, Mr. BACA, Mr. BECERRA, Mr. BAIRD, Mr. BERMAN, Mr. BLUMENAUER, Mrs. CAPPS, Mr. CAPUANO, Mr. CONDIT, Mrs. DAVIS of California, Mr. DEFazio, Mr. DICKS, Ms. ESHOO, Mr. FARR of California, Mr. FILNER, Mr. GEPHARDT, 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, Mrs. TAUSCHER, Mr. THOMPSON of California, Ms. WATERS, Mr. WAXMAN, Ms. WOOLSEY, and Mr. WU) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

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

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

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

10 (4) The Federal government should augment  
11 the states' response to the emergency by protecting  
12 consumers from excessive wholesale rates.

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

22 (6) Federal and State efforts to protect the environment  
23 have not significantly contributed to these  
24 problems.

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

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

7           (9) The Federal Energy Regulatory Commis-  
8           sion issued orders on March 9, 2001, March 14,  
9           2001, and March 16, 2001 alleging that generators  
10          had overcharged California utilities more than \$130  
11          million.

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

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

20          (12) The market conditions that have existed in  
21          California, Washington, and Oregon for months now  
22          exist in neighboring states, where electricity costs  
23          are also rising.

24          (13) Unless the Federal Energy Regulatory  
25          Commission intervenes in the western wholesale elec-

1       tricity market, nothing will constrain the wholesale  
 2       price of electricity and the situation this coming  
 3       summer may worsen by orders of magnitude.

4           (14) On March 9, 2001, the Governors of Cali-  
 5       fornia, Oregon, and Washington wrote to the Chair-  
 6       man and Commissioners of the Federal Energy Reg-  
 7       ulatory Commission to request that cost-of-service  
 8       based rates be imposed in the western region.

9           (15) The Federal Energy Regulatory Commis-  
 10      sion has failed to fulfill its obligations under the  
 11      Federal Power Act to act in the best interest of con-  
 12      sumers by mandating just and reasonable wholesale  
 13      rates in the western energy market.

14   **SEC. 3. WHOLESALE ELECTRICITY RATES IN THE WESTERN**  
 15           **UNITED STATES.**

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

17           (1) The term “Commission” means the Federal  
 18       Energy Regulatory Commission.

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

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

25           (B) Either—

1 (i) a reasonable risk premium, or  
2 (ii) a return on invested capital used  
3 to generate and transmit such electric en-  
4 ergy that reflects customary returns during  
5 the period 1994 through 1999.

6 (C) Other reasonable costs associated with  
7 the acquisition, conservation, and transmission  
8 of such electric energy.

9 (3) The term “new generation facility” means  
10 any facility generating electric energy that did not  
11 generate electric energy at any time prior to Janu-  
12 ary 1, 2001.

13 (b) EXERCISE OF AUTHORITY TO ESTABLISH COST-  
14 BASED RATES.—Within 30 days after the enactment of  
15 this Act, the Commission shall issue an order establishing  
16 cost-of-service-based rates for electric energy sold at  
17 wholesale subject to the jurisdiction of the Commission  
18 under the Federal Power Act for use in that portion of  
19 the United States that is covered by the Western Systems  
20 Coordinating Council of the North American Electric Reli-  
21 ability Council.

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

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

4 (e) ENFORCEMENT.—

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

14 (2) CIVIL PENALTIES.—Any person who vio-  
15 lates any requirement of this section shall be subject  
16 to civil penalties equal to 3 times the value of the  
17 amount involved in such violation. The Commission  
18 shall assess such penalties, after notice and oppor-  
19 tunity for public hearing, in accordance with the  
20 same provisions as are applicable under section  
21 31(d) of the Federal Power Act in the case of civil  
22 penalties assessed under such section 31.

23 (f) REFUNDS.—In the case of sales of electric energy  
24 for use in that portion of the United States that is covered  
25 by the Western Systems Coordinating Council of the

1 North American Electric Reliability Council the Commis-  
 2 sion shall order the refund of any rates and charges that  
 3 were not just and reasonable and that applied to sales be-  
 4 tween June 1, 2000 and the enactment of this Act. Any  
 5 affected State may bring an action in the appropriate  
 6 United States district court to enforce this subsection.

7 (g) SAVINGS PROVISIONS.—Nothing in this section  
 8 shall affect any authority of the Commission existing be-  
 9 fore the enactment of this section.

10 **SEC. 4. GUARANTEE OF PAYMENT REQUIRED FOR CERTAIN**  
 11 **EMERGENCY POWER SALES.**

12 Section 202(c) of the Federal Power Act (16 U.S.C.  
 13 825(c)) is amended by adding the following at the end  
 14 thereof: “Except during the continuance of any war, no  
 15 order may be issued under this subsection unless the pay-  
 16 ment of compensation or reimbursement to the person  
 17 subject to such order is fully guaranteed by the United  
 18 States Government or by a State government.”.

19 **SEC. 5. SEVERABILITY.**

20 If any provision of this Act is found to be unenforce-  
 21 able or invalid, no other provision of this Act shall be in-  
 22 validated thereby.

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