

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0514**

December 3, 2009

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Office of the Speaker  
H-232, United States Capitol  
Washington, DC 20515

Dear Speaker Pelosi,

We are writing to express our concerns about H.R. 3795. We are concerned that in its current form, this legislation could undermine the authority Congress gave the Federal Energy Regulatory Commission (FERC) in the aftermath of the Western energy crisis to investigate and penalize market manipulation.

In 2000 and 2001, Western states experienced a severe energy crisis. Blackouts caused economic chaos, and energy prices in the state skyrocketed. In 1999, Californians paid \$7.4 billion for wholesale electricity. A year later, these costs rose 277% to \$27.1 billion. In the Pacific Northwest, where the historical average spot price was about \$24/MWh, average spot prices soared to between \$200/MWh and \$500/MWh during the summer and fall of 2000, finally spiking at \$3300/MWh in early December 2000. According to the California state government and electric utilities in the state:

This extraordinary increase in cost imposed great hardship on the State's citizens and businesses, crippled the State's two largest utilities, and took the State's budget from a multi-billion dollar surplus to a multi-billion dollar deficit, thereby robbing schools, police forces, and many other essential services of needed funds. Ultimately, it caused a life-threatening power crisis that sent the nation's most populous state into rolling blackouts.<sup>1</sup>

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<sup>1</sup> California Parties (Bill Lockyer, California Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company), California Parties' Supplemental Evidence of Market Manipulation by Sellers, Proposed Findings of Fact, and Request for Refunds and Other Relief (Mar. 3, 2003) (filed with FERC) (online at <http://www.cpuc.ca.gov/Published/Graphics/24269.PDF>).

Early evidence showed — and later evidence has proven — that these prices were the result of deliberate actions under lax regulation. Energy companies took advantage of market design flaws and negligent federal enforcement to increase profits through substantial market abuse and market manipulation.

After the energy crisis, Congress, in the Energy Policy Act of 2005, gave FERC broad authority to protect electric and natural gas markets against fraud or manipulation. We are concerned that FERC's ability to exercise this authority to the full extent Congress intended would be in serious doubt with passage of H.R. 3795.

These problems occur because the broad definition of "swap" in H.R. 3795 combined with the exclusive jurisdiction provision of the Commodity Exchange Act could strip FERC of essential regulatory authority. The whole point of H.R. 3795 is to enhance protections against fraud and market manipulation. Undermining FERC's authority to protect consumers from the kind of market abuse we experienced in 2000 and 2001 would be a major step backward.

We respectfully request that you work to ensure that when H.R. 3795 comes to the floor, language is included that ensures FERC's authority to investigate market manipulation and police these markets is fully preserved.

Respectfully,



Anna G. Eshoo  
Member of Congress



Jay Inslee  
Member of Congress

cc: The Honorable Steny Hoyer  
Majority Leader

The Honorable Collin C. Peterson  
Chairman, Committee on Agriculture

The Honorable Barney Frank  
Chairman, Committee on Financial Services

The Honorable Henry Waxman  
Chairman, Committee on Energy and Commerce

Michael Huber

Lois Capps

Bright Brin

Paul Blumenauer

Bob Finner

Michelle Granger

Bob

Liane E. Watson

Sam Lane

Phil Meyer

Or

Lynn Woolley

Doris O. Matsui

Grace F. Napolitano

Howard P. Berman

Barbara Lee

Linda J. Sany

Pete Stark

Laura Richardson

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Joy M. Ny

Janet Hurman

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The following Members of Congress signed this letter:

Anna G. Eshoo  
Michael Honda  
Lois Capps  
Brian Baird  
Earl Blumenauer  
Bob Filner  
Mike Thompson  
Adam Schiff  
Diane Watson  
Linda Sanchez  
Pete Stark  
Laura Richardson

Jay Inslee  
Sam Farr  
Peter DeFazio  
David Wu  
Lynn Woolsey  
Doris Matsui  
Grace Napolitano  
Howard Berman  
Barbara Lee  
Jerry McNerney  
Jane Harman