

116TH CONGRESS
2D SESSION

H. R. 5742

To direct the Federal Energy Regulatory Commission to find that certain rates for electricity are inherently unjust and unreasonable, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2020

Mr. CASTEN of Illinois (for himself, Mr. LEVIN of California, Mr. HUFFMAN, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Energy Regulatory Commission to find that certain rates for electricity are inherently unjust and unreasonable, 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 Prices Require
5 Including Climate Externalities Act” or as the “Energy
6 PRICE Act”.

7 **SEC. 2. PURPOSE.**

8 The purpose of this Act is to clarify the intent of Con-
9 gress when passing the Federal Power Act and to provide

1 direction to the Federal Energy Regulatory Commission
2 with respect to wholesale electricity rates.

3 **SEC. 3. FINDINGS.**

4 Congress makes the following findings:

5 (1) When passing the Federal Power Act, Con-
6 gress required the Federal Energy Regulatory Com-
7 mission (“the Commission”) to ensure that the rates
8 charged by electric utilities for, or in connection
9 with, wholesale electricity rates are “just and rea-
10 sonable”, a process which necessarily includes the
11 evaluation of all factors affecting wholesale market
12 rates, including environmental externalities.

13 (2) The Federal Power Act requires the Com-
14 mission to ensure that public utilities do not grant
15 undue preference or advantage to, or discriminate
16 against, any person when making wholesale elec-
17 tricity sales.

18 (3) Section 206(a) of the Federal Power Act
19 authorizes the Commission to change any rates that
20 the Commission determines to be “unjust, unreason-
21 able, unduly discriminatory or preferential”.

22 (4) In its final rule titled “Endangerment and
23 Cause or Contribute Findings for Greenhouse Gases
24 Under Section 202(a) of the Clean Air Act” pub-
25 lished on December 15, 2009 (74 Fed. Reg. 66496),

1 the Environmental Protection Agency found that the
2 emissions of greenhouse gases “endanger both the
3 public health and the public welfare of current and
4 future generations”.

5 (5) The failure of markets to internalize the
6 costs of greenhouse gas pollution into the cost of
7 products, including electricity, led to a misallocation
8 of capital, and therefore to the emission of a greater
9 volume of these pollutants.

10 (6) In 1956, the Supreme Court held in *Federal*
11 *Power Commission v. Sierra Pacific Power Com-*
12 *pany*, 350 U.S. 348 (1956), that the Commission
13 must ensure protection of the public interest when
14 exercising its authority to set just and reasonable
15 rates.

16 (7) The restructuring of the electricity industry
17 in the Federal Power Act was intended to promote
18 competition among electricity providers, resulting in
19 lower electricity rates to consumers, higher quality
20 services, and a more robust national economy.

21 (8) Prior to restructuring, utility commissions
22 were frequently asked to consider other societal ben-
23 efits when setting rates, including access to energy,
24 rate equity between different classes of customers,
25 and environmental concerns.

1 (9) According to the Environmental Protection
2 Agency, in 2017, emissions from the power sector
3 contributed the second highest share of greenhouse
4 gas emissions by economic sector.

5 (10) The benefits of competition will not be
6 achieved if some competitors enjoy an advantage re-
7 sulting from externalization of environmental costs,
8 permitting them to charge prices for electricity that
9 do not reflect the full economic and environmental
10 cost of production.

11 (11) Despite the Environmental Protection
12 Agency's finding of endangerment, emissions of
13 greenhouse gases into the air, which endanger public
14 health and threaten the quality of the air, land, and
15 water of the United States, are externalities that are
16 not frequently or uniformly reflected in the price
17 charged for products such as electricity across the
18 United States.

19 (12) The disparity in regulatory treatment be-
20 tween electric generating units with above-average
21 greenhouse gas emissions and those with little to no
22 greenhouse gas emissions provides a significant com-
23 petitive advantage for high greenhouse gas emitting
24 energy generating units over their competitors.

1 (13) States and State commissions should be
2 encouraged to incorporate the cost of greenhouse gas
3 emissions into wholesale rates for electricity.

4 **SEC. 4. CERTAIN RATES UNJUST, UNREASONABLE, UNDULY**
5 **DISCRIMINATORY, OR PREFERENTIAL.**

6 (a) IN GENERAL.—For the purposes of section 205
7 and section 206 of the Federal Power Act (16 U.S.C.
8 824d, 824e), if the Federal Energy Regulatory Commis-
9 sion determines that a rate for the wholesale sale of elec-
10 tricity does not incorporate the cost of externalized green-
11 house gas emissions to public health, safety, or welfare,
12 then the Federal Energy Regulatory Commission shall
13 find that such rate is unjust, unreasonable, unduly dis-
14 criminatory, or preferential.

15 (b) GREENHOUSE GAS DEFINED.—In this sub-
16 section, the term “greenhouse gas” includes—

17 (1) any gas identified by the Environmental
18 Protection Agency in the final rule titled
19 “Endangerment and Cause or Contribute Findings
20 for Greenhouse Gases Under Section 202(a) of the
21 Clean Air Act” published on December 15, 2009 (74
22 Fed. Reg. 66496), including carbon dioxide, hydro-
23 fluorocarbons, methane, nitrous oxide, perfluorocar-
24 bons, and sulfur hexafluoride; and

25 (2) nitrogen trifluoride.

1 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed to affect or modify the existing au-
3 thorities of the Federal Energy Regulatory Commission.

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