

**Senate Joint Resolution**

**No. 2**

**Introduced by Senator Morrow**

March 12, 2001

Senate Joint Resolution No. 2—Relative to electricity pricing.

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, as introduced, Morrow. Electricity pricing.

This measure would memorialize the members of the Federal Energy Regulatory Commission to, using confidential information, provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level of electricity, obtain better measures of potential capacity withholding behavior of generators, determine the role of marketers in the production and bidding behavior of the California generators, and examine the behavior of generators located outside the California Independent System Operator, as specified. The measure would further memorialize the Congress to hold committee hearings and engage in all other necessary oversight activities to ensure that the Federal Energy Regulatory Commission completes these determinations and estimates in as timely a manner as possible and to review the confidential industry data, as specified.

Fiscal committee: no.

1 WHEREAS, It is clear that the electrical power crisis in  
2 California and the Western Regional Coordinating Council area  
3 (WRCC) is primarily a supply-side deficiency, created in large  
4 part by California's failure to expand and upgrade its electricity  
5 generation and transmission infrastructure during the past decade;  
6 and



1 WHEREAS, While it is logical that the inadequate supply of  
2 electricity, especially during peak periods, would drive wholesale  
3 market prices higher, many observers allege that the  
4 extraordinarily high actual prices of the past year are too high to  
5 be explained by standard market fundamentals in a workably  
6 competitive market; and

7 WHEREAS, Analytical studies of wholesale electricity market  
8 performance during the past year in California, reviewed both the  
9 competitive benchmark prices, including all major market  
10 fundamentals, and potential capacity withholding; and several of  
11 these studies, including one conducted by the California  
12 Independent System Operator (ISO), conclude all of the  
13 following:

14 (a) The markets were not workably competitive.

15 (b) The high wholesale electricity prices cannot be explained  
16 as the natural outcome of “market fundamentals”, such as rising  
17 natural gas prices, increased loads in California, reduction of  
18 supplies available for import into California due to higher loads  
19 elsewhere in the Western States Coordinating Council (WSCC), or  
20 poor hydroelectric conditions in the Northwest, in competitive  
21 markets since there is a very significant gap between actual market  
22 prices and competitive benchmark prices that take account of these  
23 market fundamentals.

24 (c) There is empirical evidence, not yet adequately explained  
25 away, to support a presumption that the high prices experienced  
26 were the product of deliberate actions on the part of generators or  
27 marketers controlling the dispatch of generating capacity to  
28 withhold supply and increase market prices; and

29 WHEREAS, While analyses of possible capacity withholding  
30 behavior have been constrained by the limited availability of data,  
31 there is sufficient empirical evidence to warrant further  
32 investigation of supply and bidding behavior by generators and  
33 marketers operating in the California market; and

34 WHEREAS, Inasmuch as the Federal Energy Regulatory  
35 Commission (FERC) has determined that wholesales prices have  
36 been unfair, but refused to take corrective regulatory action,  
37 leading to numerous allegations that the FERC has failed to  
38 discharge its responsibilities mandated by the Federal Power Act  
39 (16 U.S.C. Sec. 791a et seq.) to ensure a competitive wholesale



electricity market, and these allegations have tainted the FERC's reputation; and now, therefore, be it

*Resolved, by the Senate and Assembly of the State of California, jointly,* That further study is required to support the efforts of state, regional, and federal policy makers to design appropriate remedies to the market failures identified in the studies; and be it further

*Resolved,* That further study is required to help determine whether the FERC properly discharged its duties; and be it further

*Resolved,* Full study requires access to confidential data held only by FERC; and be it further

*Resolved,* That the Legislature respectfully memorializes that FERC to do all of the following:

(a) With the use of confidential data, provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level.

(b) With the use of confidential data, obtain better measures of potential capacity withholding behavior of generators, and determine the role of marketers in the production and bidding behavior of the California generators.

(c) Examine the behavior of generators located outside the California ISO to determine exactly why importers declined as much as they did.

(d) Conduct formal hearings on the issue of illegal pricing and capacity withholding.

(e) Extend the 60-day refund deadlines pending the findings of these examinations and hearings; and be it further

*Resolved,* That the Legislature respectfully memorializes the Congress of the United States to do all of the following:

(a) Hold committee hearings and engage in all other necessary oversight activities to ensure that the FERC completes the above described determinations and estimates in as timely a manner as possible.

(b) Hold committee hearings and engage in all other necessary oversight activities, including reviewing the above described confidential industry data to determine whether the FERC has met its mandate, under the Federal Power Act, to ensure existence of a competitive wholesale electric market.

(c) Ensure that the FERC has both the necessary accountability to the Congress and resources to accomplish all the above; and be it further

1     *Resolved*, That the Secretary of the Senate transmit copies of  
 2 this resolution to the President and Vice President of the United  
 3 States, The Speaker of the House of Representatives, to each  
 4 Senator and Representative from California in the Congress of the  
 5 United States, and to each member of the Federal Energy  
 6 Regulatory Commission.

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