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Dan R. Brouillette, Assistant Secretary for Congressional and Intergovernmental Affairs.
Theresa Alvillar-Speak, Director, of Minority Economic Impact.

HEALTH AND HUMAN SERVICES
Wade F. Horn, Assistant Secretary for Family Support.
Kevin Keane, Assistant Secretary for Public Affairs.
Janet Hale, Assistant Secretary for Management and Budget.
Alex Azar, III, General Counsel.
Janet Rehnquist, Inspector General.
Joseline Carbomeli, Assistant Secretary for Aging.
Joan E. Ohl, Commissioner, Administration for Children, Youth and Families.

HOUSING AND URBAN DEVELOPMENT
Michael Minnor Fawn Liu, Assistant Secretary for Public and Indian Housing.
Melody H. Fennel, Assistant Secretary for Congressional and Intergovernmental Affairs.

JUSTICE
Ralph F. Boyd, Jr., Assistant Attorney General for Civil Rights.
Deborah J. Daniels, Assistant Attorney General, Office of Justice.
Thomas L. Sansonetti, Assistant Attorney General for Environment & Natural Resources.
Robert D. McCallum, Jr., Assistant Attorney General for the Civil Division.
Eileen J. O'Connor, Assistant Attorney General for Tax Division.
Sarah V. Hart, Director, National Institute of Justice.
Richard R. Nedelkoff, Director of the Bureau of Justice Assistance.
Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention.
James W. Ziglar, Commissioner, Immigration and Naturalization Service.
John W. Gillis, Director, Office for Victims of Crime.
Ada Hutchinson, Administrator, Drug Enforcement Agency.
Sharee M. Freeman, Director, Community Relations Service.
Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission.

LABOR
Eugene Scalia, Solicitor of Labor.
John Lester Henshaw, Assistant Secretary, Occupational Safety and Health.
Emily Stover DeRocco, Assistant Secretary for Employment Training Administration.

STATE
Otto J. Reich, Assistant Secretary for Western Hemisphere Affairs.
Charlottesville, L. Bear, Undersecretary for Public Diplomacy.
Clark Kevin Ervin, Inspector General.
Dennis L. Schornack, Commissioner, International Joint Commission.
William A. Eaton, Assistant Secretary for Administration.

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REGULATION OF ENERGY MARKETS
Ms. CANTWELL. Mr. President, I rise today to address an issue of extraordinary importance to the State of Washington, the Pacific Northwest, and the entire west coast. That is the role of the Federal Energy Regulatory Commission in regulating our Nation’s energy markets and righting the wrongs that have been visited upon ratepayers in the West by runaway energy prices over the last year.

Mr. KYL. Mr. President, I will continue to work with the majority and minority leaders to ensure that we can consider these nominees.

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Ms. CANTWELL. Thank you, Mr. President.
main concern is that in the haste of putting the California debacle behind it, FERC will again overlook the Northwest and consumers who have been impacted by as much as 50-percent rate increases.

I am afraid my suspicions were borne out last week when the administrative law judge charged with overseeing this refund matter issued his recommendations to FERC, again paying little attention to the Northwest problem. It is now up to FERC to determine what to do with the judge’s recommendation.

I believe the Commission could not—and cannot—in the interest of fairness ignore the Northwest in its refund calculation. While many of my colleagues are well aware of the toll this crisis has taken on California, we—all of us—cannot disregard the impact that it has had on Northwest citizens, businesses, and communities of Washington State.

Equitable treatment in this refund proceeding requires that the Commission recognize a certain fundamental truth: That Northwest consumers have been harmed, and they have been harmed by unjust and unreasonable prices that have prevailed in all energy markets throughout the West—inside and outside California, and in spot, forward, and long-term power markets.

There are differences between how California and Northwest utilities manage their obligations to serve consumers. Thus, FERC should not come up with a one-size-fits-all solution for a refund methodology. The basic litmus test should be this: Did power rates meet the commonsense test of reasonableness? If the answer is no, then the Commission must order refunds. This determination should not depend on whether the utilities bought energy on the spot market or made their purchases under long-term contracts.

The Northwest has been hurt by California’s dysfunctional marketplace, and yet we now also risk being hurt because we in the Pacific Northwest do not operate the same way as the California ISO, when it comes to the issue of refunds. We run the risk of being penalized twice.

Western consumers have been impacted by the havoc unleashed by California’s unstable energy markets and the apparent gamesmanship of a few who have taken advantage of this broken power market.

This topic is of particular concern to the Northwest because, as the crisis has evolved, FERC has been slow to respond to the situation in California, and slower to respond in the Northwest. In the refund proceeding, focusing solely on California’s spot markets would significantly harm the utilities of my State and ignores the residual damage that California has caused in all of the energy markets throughout the West.

What are some of those impacts? Make no mistake. The pain inflicted by this crisis has been real on the people of Washington State. Over the last year skyrocketing energy prices have caused utilities to raise rates in all corners of my State: 20 percent in Clark County, 30 percent in Cowlitz, Skamania, and Okanogan counties, 35 percent in Snohomish County, and 50 percent in the cities of Tacoma and Seattle. Even as these utilities have passed on rate increases to consumers, some have been forced to issue hundreds of millions of dollars’ worth of bonds to cover the cost. Seattle, for example, normally spends $100 million per year on purchasing power. This year the city spent over $450 million to keep the lights on—and that is just in the first 6 months of the year.

While the utility in its first 98 years of history issued a total of only about $1 billion in bonds. It is having to issue $700 million in debt this year alone to pay for its purchased power bills. A number of Northwest utilities have even had their bond ratings downgraded as a result of this crisis.

Indeed, the economic impacts on Washington have already begun to take root. Energy-intensive industries such as aluminum smelting and pulp and paper industries have been driven to the brink of collapse, and layoffs already number in the tens of thousands. There are innumerable other businesses that are on the brink as well.

For example, Georgia-Pacific has shut down its pulp and paper mill in Bellingham, WA, laying off 420 workers. Another pulp and paper mill in Stelalcom, WA, has had to idle its workforce due to escalating power prices.

Washington’s aluminum industry, which provides my State with between 7,000 to 8,000 family-wage jobs, has curtailed production and will not be in production anywhere from 6 months to 2 years. And it is unclear whether those companies will ever resume production at their current levels given this agreement to shut down.

These companies, which produce a large portion of the Nation’s aluminum, have given up more than 75 percent of their power in order to minimize the rate increase for the entire region.

Due to drought conditions and the cost of purchasing power for irrigation, many farmers in the State of Washington have also been hurt. They have chosen to forego the planting this summer.

Because agriculture is already one of the most stressed industries in Washington, the impacts of the current energy situation are particularly devastating. Many of our irrigators have been paid not to farm based on energy efficiency and will actually produce more steel this year. But despite this extraordinary effort to reducing energy consumption, the company’s power bills are 60 percent over what it was the year before, virtually I have just eaten any profits and already forcing a handful of layoffs. In the words of the company’s president, any further rate increase will mean that the farm will have to close its doors.

This crisis has a very human face. The LIHEAP caseload in the State of Washington is expected to grow 50 percent this year. I have heard from many senior citizens who can’t afford to light their homes at night and will be making hard choices later this fall and winter about heating their homes and buying food. I have visited children who are worried that their parents, in some of those industries I mentioned, will lose their jobs. And those children are concerned they will then lose their homes when their mothers and fathers do not have the work to pay their bills.

Our schools have also had to cut corners. The Central Valley School District near Spokane, for example, has had to divert over $200,000, that would otherwise be used on textbooks, to pay its energy bills.

What is more startling is the gravity of these impacts, and the number of Washington residents suffering from this crisis, is going to continue to grow. I say that because the Bonneville Power Administration, which provides Washington with 70 percent of its power, will be forced to raise its rates another 46 percent this October.

It is clear that FERC has an obligation to me, I have just mentioned, and to help the State of Washington overcome the economic impacts caused by the California market and by a serious drought. FERC must not only stabilize our market and ensure fair rates in the future, but must also address past wrongs and the harm that has impacted consumers.

FERC took its first serious step in its June 19 price mitigation order. Given the economic casualties in my State, I believe this to still be overdue. But it was a positive first step.

The effectiveness of FERC’s price mitigation plan will remain of vital concern to all of us from the West. We
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need to remain mindful of what the effects of this California-focused mechanism on supply in the Northwest, as our region has seen in this current and previous winter heating season approaches.

But let me address specifically the issue of refunds and where we are today in the process. Of particular concern to me is that the fact, as part of the June 19 order, FERC established a 15-day settlement conference for participants in California energy markets, and others in the West, to reach agreement on potential refunds for overcharges and settlement of California’s unpaid accounts.

As has been the case throughout this crisis, the order was initially silent on the issue of relief for the Pacific Northwest. It was only after the intervention of a bipartisan group of Northwest Senators, for the Northwest, that the Order clarifying that Northwest parties would also participate in those discussions.

But the 15-day settlement window has now closed and no agreement has been reached that would provide consumers in either Washington State or California. As I have mentioned, the administrative law judge made his recommendation last week on how to proceed. He was mostly silent on the issue of relief for the Pacific Northwest. It should also be noted that, to the extent the recommendations did comment on our concerns, it was not factually correct. While the recommendations said Pacific Northwest parties “did not have data on what they were owed, nor an amount of refunds due them,” it is a matter of public record that a group of Northwest utilities—net purchasers in the West’s dysfunctional power markets—submitted a claim for $580 million, as well as documentation and a proposed methodology for calculating those refunds.

That notwithstanding, this is a silence the Commission itself cannot, in the interest of fairness, sustain. FERC must seek an equitable solution for the Northwest.

First, FERC needs to recognize that most Northwest participants in the California markets are load-serving utilities. These load-serving utilities are responsible for a very small percentage of the power sold into the California market—certainly no more than 4 percent—and they are clearly not the parties that broke the market. Furthermore, many in the Northwest, especially the Bonneville Power Administration, have been partners in helping solve the California problem by keeping the lights on during emergencies, at costs to the Northwest that cannot necessarily be quantified—particularly when one takes into account the Northwest’s endangered species and salmon issues, and the delicate balance of crops and water, as we generate power, it is quite a delicate balance.

Unlike power marketers or merchant generators, Northwest utilities operate under a statutory obligation to meet all their customers’ electricity needs. Further, our region’s power supply is essentially based on hydropower. A full 78 percent of Washington state’s generation comes from hydropower. As has been made painfully clear by this year’s drought—which has amounted to the second worst year of drought on record in the history of our State—the vagaries of hydroelectric production require that our utilities make other wholesale power purchases to meet load. In keeping with reasonable utility planning practices, these companies buy a portfolio of products of varying duration.

This points to a second, fundamental difference between the Northwest and California markets: Whereas California utilities were forced, under the State’s restructuring law, to make all of their purchases in a centralized hour-ahead or day-ahead market, we have no such centralized market in the Northwest. While we do have very short-term bilateral markets, our utilities have traditionally only used these to balance the difference between forecasted and actual loads, streamflows, weather conditions, and other similar factors.

Unlike the California ISO market, the Northwest utilities rely heavily on “forward” or long-term contracts that last for periods varying from a month ahead to a quarter or two or even longer.

But these contracts have been closely affected by the skyrocketing spot market prices in California. It is thus absolutely crucial, for the purposes of its refund proceeding, that the FERC recognize that power prices throughout the West—and not just in spot markets, but in these forward contracts as well—are unjust and unreasonable. Washington State’s prices have moved in lockstep with the spot market prices.

In its June 19 order, the Commission itself commented on this, stating that there is a “critical interdependence among prices in the ISO’s organized spot markets, the prices in the bilateral spot markets in California and the rest of the West, and the prices in forward markets.”

So the Commission itself has recognized the relationship between these prices. Indeed, when one compares forward contract prices in the Northwest with spot market rates both within the region and across the border, they show a correlation of more than 80 percent on a monthly average basis; that is, forward prices in the Northwest have moved in tandem with California’s prices, which the Commission has deemed unjust and unreasonable. It is these forward prices that have largely driven the rate increases in the Northwest.

It is clear, then, that any FERC refund order that seeks to treat all Western participants fairly, as the Power Act says it must, must recognize the relationship between spot markets and forward markets.

Simply put, any refund policy must not disadvantage the utilities in the Northwest because of the contractual mechanism they have used to acquire power.

Let me just touch on the case of BPA because I mentioned it earlier. Throughout this crisis, BPA has responded to the California ISO’s urgent calls for power supply when the State was teetering on the edge of rolling blackouts. In fact, on three separate occasions, the Department of Energy issued emergency orders directing Bonneville to sell power into the State of California. It should also be noted, however, that California entities have yet to repay BPA for about $100 million of these transactions.

As one of these entities has entered into bankruptcy, it remains questionable whether the Northwest will ever receive this $100 million repayment. Meanwhile, BPA has at times drawn down its reservoirs, arguably compromising the reliability of Northwest power system to aid California. While BPA has sold into the California spot market, it has actually been a net purchaser during the crisis, when one looks at the amount of its forward contracts. And when faced with the volatile energy prices throughout the West, Bonneville earlier this year made the difficult decision to pay consumers to curtail their loads rather than to venture into the market.

I mentioned various of those efforts earlier in my remarks about the aluminum industry. Bonneville and the Northwest customers it serves have been victims of the power crisis, touched off by this experimentation in partial deregulation, which has created this dysfunctional market.

In conclusion, it is important that the Commission act fairly and that my State’s utilities not be penalized for sales into California when they have been forced to purchase power at a similar unjust and unreasonable rate.

It is very important that the Commission work toward a solution that gives the Northwest refunds, just as it is inappropriate to do otherwise. FERC must work towards a comprehensive settlement that addresses the claims of both California and the Northwest. In order to reach an equitable solution, it must acknowledge the fundamental differences in the two markets. I believe a fair outcome requires FERC to take a few simple steps.

First, FERC must recognize an inescapable commonsense conclusion: that
all Western power markets have been dysfunctional for quite some time. The Commission’s duty under the Federal Power Act is to ensure just, reasonable, and non-discriminatory rates in all markets at all times. I urge the Commission to act in accordance with section 309 of the Power Act in doing this.

Second, power prices have been unjust regardless of the type of market which the Northwest operates in. The fact is, we in the Northwest have a different market than California, and FERC simply cannot use the same formula when calculating refunds for our consumers. It must take into account both forward and long-term contracts. Those utilities that can, using this methodology, demonstrate a legitimate complaint should receive refunds.

Third, FERC must not leave the Northwest behind. Northwest utilities must be allowed to plead their case during the upcoming evidentiary hearing.

Finally, repayments of amounts due to the Northwest for sales into California must be an integral part of any refund calculation.

I call on the FERC Commissioners to incorporate these principles into a refund policy for the Northwest. It is indisputable that the Northwest has been harmed. Now it is up to FERC to take the action to mitigate those damages and to repay the consumers in Washington State.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

THE GREAT COMPROMISE

Mr. BYRD. Mr. President, 214 years ago today, on July 16, 1787, the members of the Constitutional Convention agreed to a plan known as the Great Compromise. Edmund Randolph, on May 29, 1787, had introduced the “Virginia Plan”, drafted by James Madison, which provided for a Senate and a House of Representatives and would replace the unicameral legislature under the Articles of Confederation. Randolph had described the plan as designed to promote “peace, harmony, happiness, and liberty.” Under the Virginia plan, both Houses of Congress would be apportioned by population, an arrangement that would favor larger states like Virginia, the State of Pennsylvania, the State of Massachusetts.

On June 15, 1787, Mr. John Dickinson of Pennsylvania had countered with the “New Jersey” plan, which was really a series of amendments designed to strengthen rather than replace the Articles of Confederation. Its supporters, representing the smaller States, worried that the Virginia Plan would be unfair to states like New York, New Jersey, and Pennsylvania.

The smaller States had lost the first battle, but they had enough votes to keep the Convention from succeeding, unless they could force the new government to firmly protect their rights, the rights of the smaller States. They demanded the same equality of the States that had existed under the Articles of Confederation. On July 1, the Convention split 5 to 5 on the issue. The Georgia Delegates were split and did not vote. This tie represented a deadlock between the conflicting demands of the larger and smaller States. When the Convention recessed to celebrate the Fourth of July, the Delegates appointed a special Committee to solve the dispute. Elbridge Gerry of Massachusetts chaired the Committee which devised a compromise that apportioned the House by population and gave the smaller states seats in the Senate. Inasmuch as the idea for the special Committee had been proposed by Roger Sherman, a Connecticut Delegate, the “Great Compromise” is also known as the “Connecticut Compromise.”

Promoting the plan, William Samuel Johnson of Connecticut explained that under this arrangement the two Houses of Congress would be “halves of a unique whole.”

The Great Compromise is one of the more momentous events in our country’s history. Most people are probably unaware of it or have forgotten their high school days during which they should have learned about it. But for the Great Compromise, the course of our country’s history might have been forever altered.

Fortunately for us, the men who attended the Philadelphia Convention were some of the ablest and brightest leaders of the time, in fact, of any time. What a gathering that was. Never before or since, one ever before, under whose guidance our Lord sat and broke bread with those about the table, was there a gathering like this one in Philadelphia, 214 years ago today.

What a gathering that was! Never before had there been such an abundance of wisdom and learning, grace and dignity—not since the Roman Senate had gathered and been observed by Cineas, the Ambassador of Pyrrhus, King of Epirus, who visited the Roman Senate at the behest of Brutus in the time of Cato. Cineas, the philosopher, was charged by Pyrrhus to present a peace proposal to the Roman Senate. Cineas had brought with him bribes for Roman Senators. He had brought with him rich robes for the wives of Senators. But he had found no takers—none. Cineas was impressed. The sight of this great city, the city of Rome of the seven hills, its austere manner, and its patriotic zeal, struck Cineas with admiration. He had heard the deliberations of the Roman Senate and he had observed its men, he reported to Pyrrhus that here was no mere gathering of venal politicians, here was no haphazard council of mediocre minds, but, in dignity and statesmanship, veritably “an assemblage of kings.”

As the delegates were seated, the credentialed members of the Constitutional Convention. Never before or after, since conclaves on Mount Olympus, attended by the “gods of Greece” in Rome, has there been a gathering like it. From Virginia alone, there were George Washington, James Madison, George Mason, Edmund Randolph. From Massachusetts, there were Elbridge Gerry and Rufus King. From Pennsylvania, there were James Wilson, Benjamin Franklin, and the man with the peg leg, Gouverneur Morris. And from New York, there was the great Alexander Hamilton—small in stature but large in wisdom. Here was a constitutional “dream team” for the ages. Fifty-five men, in all, presented the credentials of a Constitution, representing every State, save one—Rhode Island. And with passion and gusto, they had set about devising a plan that would create a new nation.

In our own time, in these sometimes disgustingly partisan days, many of us are prone to overlook the tremendous physical and mental effort expended in drafting the Constitution. In reading this short document—here it is, the Constitution of the United States. I hold it in my hand. And reading this short document with its precise and careful phrases, it is easy to forget the toil, the sweat, the prayers, the concerns, the frustrations, the shouting, and the argumentation and the thinking and the pleading and the speeches that went into its creation during that hot Philadelphia summer.

Progress was so slow that upon one occasion, we will remember that Benjamin Franklin, the oldest man in the gathering, stood to his feet and added the observation: “If God still governs in the affairs of men, and if a sparrow cannot fall to the ground without our Father’s notice, is it possible that we can build an empire without our Father’s aid?”

The greatest sticking point, and the most threatening that was encountered in framing the Constitution, according to Madison, was the question of whether States should be represented in Congress equally or on the basis of population. The question was far from academic. The small States feared that they would be swamped in a more centralized union: The Constitution must be acceptable to the small States, as well as to the large States. The large States of Virginia, Massachusetts, and Pennsylvania were looked upon by the Virginians alone with fear and distress. The small States feared that a Congress based on population would be dominated by the large States. Virginia would have 16 times as