US regulatory commission sanctions profit-gouging by energy suppliers to California

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The US Federal Energy Regulatory Commission (FERC) approved on April 26 the imposition of limited price caps on wholesale energy prices in California's electricity market. Filled with loopholes, however, the measure will do little to curtail the price-gouging practices of power suppliers and energy brokers who have reaped huge profits from the deregulation of the state's energy market.

Designed to continue providing strong financial incentives and protect big investors, the price controls are, in the words of FERC Chairman Curtis Hérbert, a Mississippi Republican and protégé of Senate Majority leader Trent Lott, “about as free market as you can get when it comes to mitigating prices.”

Governor Gray Davis derided FERC's plan as a “shell game.” Davis, whose state Democratic Party enthusiastically backed deregulation, has criticized out-of-state energy suppliers for colluding to raise energy prices. Davis has attempted to dissipate public anger over ongoing energy alerts, rolling blackouts, the state's financial crisis and the massive profit-making by big business that has been the result of deregulation. But his efforts to place limited control over the big utilities and suppliers have been shrugged off by the energy conglomerates, and the efforts of the Bush administration to oppose caps on runaway electricity prices.

High energy prices, which have bankrupted Pacific Gas & Electric (PG&E), driven Southern California Edison to the verge of financial collapse, and drained the state treasury of $5.2 billion in the form of state-funded energy purchases, have become a regular feature in California. However, the FERC plan only imposes caps upon prices once a Stage 1 Energy Alert is announced. This occurs when the California Independent Systems Operator (ISO), the institution that oversees the flow of electricity in the state, determines that supply reserves have dipped below 7.5 percent.

At the same time, these price caps will be set according to the operating costs of the least efficient power plants. This formula means that generators can charge customers on the basis of the most expensive energy production possible. The result will be the continued existence of major profit windfalls for those generators who run high-efficiency operations.

While a significant portion of California's energy supply comes from out-of-state producers, the FERC plan only applies to generating capacity within the state's borders. Major energy corporations that have seen the financial benefits of the California power crunch will be unrestricted in their pricing practices.

State officials have sued five major suppliers—Duke Energy, Dynegy, Mirant, Reliant Energy and William Energy Services—charging that they formed a cartel to control prices and illegally gouged the state of billions of dollars. North Carolina-based Duke Energy is said to have overcharged California's utilities by more than $100 million. Company Chairman Richard Priory praised FERC's rate cap plan, saying it was “rational.” Duke is currently under a federal government order to return $20 million to California's utility companies, unless it can prove that the sum was not the result of price gouging practices. This week it was revealed that Duke has offered certain financial concessions to the state in exchange for a cessation of all government investigations and lawsuits.

Power suppliers are not the only businesses that have seen profit windfalls. A sizeable amount of California's energy is purchased by the state's utilities from energy brokers—middlemen who act as intermediaries between supply sources and the energy utilities. The FERC plan allows energy brokers to sell power at rates much higher than those set for generators. Critics of the FERC plan believe that once an energy alert has been called, suppliers will simply sell their power to brokers at above-cap levels. These companies will then resell it, perhaps with multiple intervening transactions with other energy brokers, back to the state at substantially higher prices than those set by the FERC.

The state's major utility companies also cashed in from deregulation before runaway prices drove them into massive debt. Last month PG&E declared bankruptcy in order to shelter the assets of its big investors from its creditors, including the state of California, which laid out millions to buy energy for the utility company. PG&E used its initial profits to build up the operations of its deregulated subsidiary, National Energy Group, which saw its profits surge 157 percent in 2000 because of soaring energy prices. PG&E also paid $110 million in dividends to its shareholders in the fourth quarter despite crippling losses by the utility. “It makes it really clear why these guys are fighting tooth and nail in every venue to make sure the corporation isn't held responsible for the utility's problems,” said Nettie Hoge, executive director of the Utility Reform Network. “I think this was a massive transfer of wealth out of the pockets of ordinary people and into the pockets of executives.”

While the FERC commissioners are committed to upholding a free-market agenda, the minimal regulatory measures, set to expire in May 2002, are an attempt by the Bush administration to appear responsive to an increasingly dire situation. At the same time the Bush administration has sought to exploit the crisis in California to push its own agenda of removing market, environmental and institutional constraints on the large energy corporations. Earlier this week Vice President Dick Cheney, a former oil company executive, announced the White House would initiate a major offensive aimed at providing government support to oil and natural gas exploration and production.

The working people of the state of California are facing a bleak summer that will be marked by increasing numbers of health risks and a worsening economic situation as the result of rolling blackouts, which could occur on 30 days over the next few months. At the same time, the multibillion-dollar state surplus is being spent at the rate of $70 million a day to finance energy purchases, guaranteeing a further assault on vitally needed social services.