



**THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH**  
419 New Jersey Avenue, SE, Washington, D.C. 20003 202-546-3700  
Fax: 202-546-2390 E-mail: [randsdell@calinst.org](mailto:randsdell@calinst.org) Web: <http://www.calinst.org>

# California Capitol Hill Bulletin

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*To expand communications between Washington and California, the California Institute provides periodic faxed bulletins regarding current activity on Capitol Hill which directly impacts our state. Bulletins are published weekly during sessions of Congress, and occasionally during other periods. The e-mail edition is made possible in part by in-kind contributions from Sun Microsystems and IBM Corp.*

## **CONGRESS PASSES 13TH CR; FY 2001 APPROPRIATIONS WORK TO BE COMPLETED AFTER ELECTION**

On Thursday evening, the House by a 310-7 vote and the Senate by unanimous consent approved H.J.Res 123, the 13th Continuing Resolution so far, which maintains for one more day funding for those federal agencies whose funds would otherwise be provided by the six FY 2001 appropriations bills which have yet to be enacted.

The House leadership is choosing to keep the House in session on a continuing basis, despite the approaching elections, passing one-day spending bills each day. However, since the Senate leadership sent Senators home for two weeks, it is unlikely that further FY 2001 budget action can take place until at least November 14.

By unanimous consent, the Senate on Wednesday passed S.Con.Res. 159, which would maintain federal funding through November 14, and in an 8-minute session on Thursday passed S.Con.Res. 160, a conditional adjournment resolution. The House has yet to take up either measure, preferring instead to remain in session with one-day extensions, but the two resolutions will remain available for House action at any time.

Also by unanimous consent on Thursday, the Senate agreed that any future one-day extensions sent to it by the House would be automatically approved by unanimous consent.

## **TREASURY/POSTAL - LEGISLATIVE FUNDS BILL VETOED**

On Monday, October 30, President Clinton vetoed the FY 2001 appropriations bill funding the Department of the Treasury, the Postal Service and Related Agencies as well as the Legislative Branch. The veto came in conjunction with the breakdown of negotiations on the Labor-HHS-Education spending measure. The House had passed the conference report, (H.Rept. 106-796) on September 14 by a vote of 212-209 and the Senate passed it by a vote of 58-37 on October 12 (after having previously rejected it). In addition to the FY 2001 appropriations, the bill also included FY2000 emergency supplemental expenditures. The vetoed bill will be reconsidered and resubmitted when Congress returns in mid-November.

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The Treasury-Postal bill (H.R. 4985) includes relatively few state-specific items. California mentions include the following:

- 1) Within Real Property Activities accounts for the General Services Administration, the federal buildings fund provides \$472 million for nine projects, including a U.S. Courthouse in Los Angeles;
- 2) Repairs and alterations funding of \$27.9 million is provided for the Federal Building in Santa Ana; and
- 3) The conference report provides \$206.5 million for the Office of Drug Control Policy and directs the office to consider "full minimum funding" for California's Central Valley under the High-Intensity Drug Trafficking Areas program.

In addition, the conferees would provide \$13.7 million to be combined with the \$11.3 million in fiscal year 2000 Super Surplus of the Treasury Forfeiture Fund to hire new inspectors, agents, or acquire new detection technology for use along the Southwest border for a total of \$25 million.

## **FERC RELEASES PROPOSAL TO RESHAPE CALIFORNIA'S ELECTRICITY MARKETS; CALIFORNIANS QUESTION FERC ACTION'S SUFFICIENCY**

On Wednesday, November 1, the Federal Energy Regulatory Commission (FERC) issued its long-awaited *Order Proposing Remedies for California's Wholesale Electric Market*. After a three-week comment period (ending November 22), FERC could issue a final order by the end of the year.

In a special briefing for the California Congressional delegation, which was hosted by Reps. Jerry Lewis and Sam Farr and the California Institute on Wednesday afternoon, FERC General Counsel Doug Smith outlined the details of this order, as well as of the simultaneously-released *Staff Report to the Federal Energy Regulatory Commission on Western Markets and the Causes of the Summer 2000 Price Abnormalities*.

In the order, FERC finds that the electric market and market rules for wholesale sales of electric energy in the state are "seriously flawed". The commission also finds that the flawed structure and rules, along with "an imbalance of supply and demand in California," caused and will potentially cause "unjust and unreasonable rates for short-term energy".

Because of this finding of "unjust and unreasonable rates," the Commission in its order suggests that it is obligated under section 206 of the Federal Power Act to act in establishing market rules and regulations to ensure future rates are just and reasonable. FERC stopped short, however, of acting to correct such wrongs *retroactively* (see below article).

Due to the finding of unjust and unreasonable rates, the order states, FERC proposes the following remedies:

- elimination of the requirement that the three investor owned utilities (IOUs) - Pacific Gas and Electric Company (PG&E), Southern California Edison Company and San Diego Gas and Electric Company - must sell into and buy from the power exchange (PX);
- addition of a penalty charge for deviation in scheduling in excess of five percent of an entity's hourly load requirements and the disbursement of penalty revenues to the loads that scheduled accurately;
- the establishment of independent, non-stakeholder Governing Boards for the PX and the ISO; and
- the establishment of generation interconnection procedures.

FERC also proposes several structural reforms which include:

- the submission of a congestion management redesign proposal;
- possible changes to the auction mechanism;

- improved market monitoring and market mitigation strategies;
- demand response programs by the ISO and Scheduling Coordinators;
- elimination of the requirement for balanced schedules; and
- a new approach to reserve requirements.

FERC acknowledges a need to ensure fair market prices while reforms are being put in place and thus proposes along with these reforms additional temporary measures to mitigate prices. These measures include: modification of the single price auction so that bids above \$150/MWh cannot set market clearing price, imposition of comprehensive reporting and monitoring requirements for sellers bidding above \$150/MWh and retention of refund remedy for sales from October 2000 through December 2000. The issue of the refund remedy became a topic of discussion during the briefing, with FERC fielding questions regarding consumers receiving possible refunds for the months of June 2000 through August 2000 when electricity rates soared. FERC acknowledged it does not have legal authority to order refunds for these months, and action to do that would require congressional approval.

In addition to proposing market rules and structure reform the FERC order also recognizes the role the state must have in carrying out this reform. The order suggests the Public Utilities Commission of California and other official entities address the following three issues: 1) delays in siting additional generation and transmission capacity; 2) implementation of additional demand response programs at the retail level; and 3) elimination of impediments on Load Serving Entities pursuing power supplies on a forward basis.

FERC will hold a public conference on Thursday, November 9 in which interested parties will be allowed to provide testimony on the above proposed remedies. In addition, written comments will be accepted through November 22. To review the FERC order in its entirety, and for more information about submitting comments, visit the Commission's website at <http://www.ferc.fed.us>.

## **CALIFORNIANS CRITICIZE FERC; LETTER CALLS FOR CALIFORNIA MEETING**

California officials on Wednesday questioned the sufficiency of the *Order Proposing Remedies for California's Wholesale Electric Market* (see [above](#) article).

At the California delegation briefing, Reps. Duncan Hunter (San Diego) and Bob Filner (San Diego) both criticized FERC's findings and the Commission staff's interpretation of the law. Rep. Hunter argued that since FERC found that the wholesale rates to have been "unjust and unreasonable", they were therefore unlawful, according to the Federal Power Act, and thus should be candidates for refund or other retroactive remedy. Rep. Filner noted that the Commission did not take depositions or inquire of any seller of power into the California market. Rep. Sam Farr (Carmel) expressed concern that the Commission proposes actions by various California entities and thereby takes inadequate responsibility itself for remedying the problem.

At the delegation briefing, FERC General Counsel Doug Smith defended the Commission staff's position that Congress in section 206 of the Federal Power Act only gave the Commission the authority to act prospectively. He stated that the Act was changed in 1988 to allow FERC to demand refunds during the pendency of a complaint, rather than upon completion of review. Since an action was filed in August, Smith argued that refunds could not be ordered prior to 60 days following that filing, or October 2. Smith stated that it would be beyond FERC's statutory authority to require retroactive refunds for the summer months, when high cooling costs inflicted the greatest suffering on California ratepayers.

Rep. Filner criticized the order, noting that despite a finding of great hardship and unjust and unreasonable rates, FERC's proposal made no recommendation for remedying the unjust past actions. Smith responded that Congress could change the law to allow retroactive remedies.

Following the briefing, the five San Diego area members of Congress, Reps. Filner, Hunter, Brian Bilbray (San Diego), Randy "Duke" Cunningham (San Diego) and Ron Packard (Oceanside) and Senators Dianne Feinstein and Barbara Boxer wrote to FERC Chairman James Hoecker requesting that the November 9 public hearing on the Order be held in San Diego. The letter asks that, if it is not possible to hold the November 9 meeting in San Diego, a supplementary meeting be held there. The letter states, "Clearly, the electricity crisis has caused more than a ripple in San Diegan's lives - a tsunami is more like it. For that reason, your Commission should hear the real impacts that your order would have on the people and institutions of San Diego."

During a discussion with reporters in California on Wednesday, Governor Gray Davis stated, "The good news is that they agree with our premise that the market is dysfunctional, rates are unreasonable and unjust. The bad news is there is no immediate remedy for ratepayers here in California." He also commented that, "deregulation can work but only if all parties act responsibly and if the market is competitive, which it is not."

## **SENATE ADOPTS WATER RESOURCES DEVELOPMENT ACT CONFERENCE REPORT; HOUSE MAY ACT THIS WEEK**

On Tuesday, October 31, the Senate adopted by unanimous consent the conference report to S. 2796, the Water Resources Development Act of 2000. The bill authorizes almost \$7 billion in funding for water projects nationally.

Included in the bill are numerous projects authorized for California. Some of those include: flood control and damage reduction projects in Huntington Beach, Pittsburg, and Contra Costa; and beach erosion projects in Newport Beach. Also authorized is an aquatic ecosystem restoration project for Clear Lake Basin.

The bill also calls for several studies, including one on the San Jacinto watershed, one on mitigating the erosion impact from the construction of Camp Pendleton Harbor, Oceanside, and a study to determine the feasibility of carrying out a project for ecosystem restoration, flood damage reduction, and recreation at Lake Merritt in Oakland.

In addition, \$32 million is authorized for the Petaluma River Project to provide a 100-year level of flood protection. Finally, pending successful certification by the Corps of Engineers the navigation project for Los Angeles Harbor is authorized at a total cost of \$153,313,000, with an estimated Federal cost of \$43,735,000.

The House may adopt the conference report before it recesses for the election.

## **CONGRESS SENDS PRESIDENT EXPORT ADMINISTRATION ACT**

On Monday, October 30, the House passed H.R. 5239, reauthorizing the Export Administration Act (EAA) until August 20, 2001. The bill controls the export of "dual use" commodities, which have both commercial and military applications. The EAA expired in 1994 and several attempts in the last six years to overhaul the Act have failed.

The original version of H.R. 5239 contained provisions increasing the penalties for violation of the Act, in accord with the 1999 recommendations of the Cox Committee, which investigated Chinese espionage of U.S. high technology. The Senate stripped those provisions from the bill when it considered it in October, and substituted the one year extension, before sending it back to the House.

The Commerce Department urged the Act's reauthorization, because since it expired the Department has been open to lawsuits brought by companies that argue they are not subject to the Act.

## **FOREIGN SALES TAX CORRECTION HITS SNAG**

The move to change U.S. tax law on the handling of foreign sales corporation income to bring it in line with a World Trade Organization (WTO) decision has hit a snag in Congress. The provision, which would replace the Foreign Sales Corporation law, was a part of the broader \$240 billion tax bill being negotiated between Congress and the White House. The Senate pulled the provision from that bill and dealt with it as a stand-alone measure on Wednesday, in order to meet the November 1 deadline set by the WTO for action. House leaders are now balking at taking the measure up, preferring to leave all tax issues in one package, rather than try to move individual pieces.

The WTO deemed the tax an illegal subsidy for about 6,000 U.S. companies. The new provision satisfies the ruling by spreading the tax exemption for income earned abroad over ten years, at a cost of \$4.5 billion.

If the change is not made before Congress adjourns for the year, the WTO can move to impose trade sanctions against the United States.

## **SECRETARY OF STATE MAKES ELECTION DAY APPEAL TO NETWORKS**

California Secretary of State Bill Jones is urging the major national news networks to refrain from projecting a winner in the presidential election before the California polls close at 8:00 p.m. Pacific time. Jones predicts the highest California voter turnout in 20 years, estimating that approximately 76% of registered voters will go to the polls, 10% higher than the last presidential election. However, some fear that voter turnout could be negatively impacted news networks project a winner in the presidential race before the west coast polls close. Mr. Jones wrote to news networks including ABC, NBC, CBS, Fox and CNN urging cooperation with this request.

## **FORT IRWIN EXPANSION AGREEMENT REACHED**

On October 26, after years of federal-level discussions, Senator Dianne Feinstein and Rep. Jerry Lewis (Redlands) announced an agreement between the Department of Interior and the Army to allow for the expansion of the National Training Center at Fort Irwin while making efforts to protect the threatened desert tortoise.

Since the mid-1980s, the U.S. Army has been unable to expand Fort Irwin, which is located between Barstow and Death Valley, due to concerns about the tortoise's habitat. The agreement, a result of two years of negotiations by Feinstein, Lewis, the Army and Interior, allows the Army to expand the Ft. Irwin training range by 131,000 acres. The plan would realign the Army's proposed maneuver training area expansion to the southwest in order to protect desert tortoise habitat in the Paradise Valley area while providing space to meet the Army's training requirements. It would designate 10 square kilometers on the southeastern side for the desert tortoise habitat. An Interior Department statement notes that, "The agreement anticipates the adoption of conservation measures to offset the possible adverse effects on the desert tortoise and other listed species, and identifies \$75 million as a planning target for such measures."

Environmentalists have criticized the 10 square kilometer set-aside as inadequate, arguing that as much as 2,000 square miles should be designated as protected habitat.

## **CLEANUP AGREEMENT REACHED FOR CLOSED MARE ISLAND NAVY SITE**

According to news reports, the U.S. Navy and the city of Vallejo have agreed on an \$80 million environmental cleanup of the Mare Island Naval Shipyard. The accord could hasten transfer of the former federal property, which closed in 1996, to local control.

If approved this month by the Vallejo city council and later by Governor Gray Davis, the deal would allow simultaneous cleanup and development of the site. According to news reports, the project's cleanup costs would be the largest since Congress began permitting early transfers in 1996. The Navy would provide \$80 million to the city, which would conduct the site cleanup.

### **SEMICONDUCTOR SALES AGAIN REACH RECORD HIGH**

Semiconductor sales again hit an industry high of \$18.4 billion in September 2000, an increase of 45.2% over \$12.67 billion in September 1999, the Semiconductor Industry Association (SIA) reported today. At this rate, the industry is expected to garner sales of \$205 billion in 2000, an increase of 37.1% over 1999, marking the first time annual industry sales will exceed \$200 billion.

The SIA predicts that the semiconductor industry will continue to grow at the rate of 21.8% in 2001, when sales will total a projected \$249 billion. The sales increases occurred in all worldwide markets. The Japanese market grew 51.2% and the Asia/Pacific market 46.6%. The Americas market rose 46.2% and the European market 35.9%.