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## **Bush's International Deregulation Agenda Threatens Energy Consumers**

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Despite the corporate fraud and market manipulation by Enron and other energy traders, which cost California billions and sent utilities into bankruptcy when the state deregulated energy markets several years ago, the Bush administration is advocating an international deregulation plan that would further erode public oversight of the troubled energy sector.

California provides a case study of what can happen when the public loses control over commodities as essential as electricity. When the legislature passed energy deregulation and California ordered the state's three electricity monopolies to sell off their power plants, the state gave up the ability to regulate rates, freeing the power producers to sell electricity to utilities and other customers at any price they chose. Vice President Dick Cheney at the time called accusations of Enron's market manipulations "goofy" and blamed the burgeoning crisis on a shortage of power plants caused by environmental regulations. All the while, the Federal Energy Regulatory Commission (FERC), headed by a Bush appointee chosen by Enron CEO Ken Lay, refused to use its power to stop the price-gouging. But during this same period, the state's municipally owned utilities, such as the one in Los Angeles, were immune to the skyrocketing wholesale prices caused in part by the intentional withholding of electricity by independent suppliers.

Thanks to energy deregulation, there was nothing California could do - and tens of billions of dollars were bilked from the state before FERC finally succumbed to enormous public pressure and imposed price controls that effectively ended the crisis. Subsequent investigations showed the electricity "shortage" was manufactured by profiteering energy corporations, not caused by environmental safeguards.

Now, the Bush administration wants to export its energy deregulation policies to the rest of the world. The subject is one of many issues being discussed during negotiations over the General Agreement on Trade in Services (GATS).

At a recent U.S. Department of Commerce forum co-hosted by energy corporations, the administration asserted it would be "working with the private sector at every step of the policy development process" on its GATS agenda. Given the administration's track record regarding domestic energy deregulation, consumers worldwide have much to fear from this new international proposal.

The GATS, which took effect in 1995, is one of 17 substantive agreements enforced by the World Trade Organization (WTO). In 2000, a new negotiation was launched. The stated purpose of "GATS 2000" is to deepen and expand the scope of GATS rules - which already constrain government regulation and

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promote privatization - and to extend these rules into a variety of service sectors. Sectors of concern include financial services, such as insurance, health care, banking and pensions, as well as public services such as higher education, water services and energy utilities.

GATS is designed to turn services into commodities that can be traded like stocks or bonds. The GATS rules allow corporations access to every countries' public and private service sectors and encourage privatization and contracting out of government services. In addition, the agreement constrains regulation of services by federal, state and local governments and allows such domestic regulations to be challenged as "barriers to trade" in the binding, closed-door dispute resolution body of the WTO.

President Bush is enthusiastically backing U.S. energy companies as they look overseas to expand their operations under the GATS. But the same agenda will have serious consequences for U.S. energy users. The European Union (EU), with its large energy corporations, supports this agenda, while most developing countries oppose it.

If energy services are added to the GATS, it would: a.) oblige the U.S. government to break apart public and private electricity monopolies to make room for foreign competition; b) make permanent any decisions to deregulate and privatize (even when, as in California, the government has sought to reverse earlier, regrettable decisions); c) restrict the ability of federal and state governments to protect consumers against unscrupulous corporations; and d) inhibit states and the federal government from enacting renewable energy goals.

GATS proponents claim that breaking apart private monopolies or publicly owned electric systems and deregulating the industry will unleash market forces that promote competition and increase efficiency, which will encourage innovation and result in lower rates for consumers. But Public Citizen has documented how the U.S. deregulation experiment - from California to Montana to Connecticut - has led to higher prices, poorer service, and, as the Wall Street Journal noted recently, "a utility industry mostly in shambles." Wholesale power prices in New England have risen 400 percent since deregulation. Even in the Pennsylvania-New Jersey-Maryland market - widely touted as the nation's deregulation success story - average monthly prices have increased 40 percent under deregulation.

### **WTO-GATS Spreads the California Energy Disaster Worldwide**

U.S. energy companies' primary motivation for supporting electricity deregulation was to break up local public and heavily regulated private monopolies that had existed for a century and put an end to regulations that curbed profits. The Bush administration's agenda for "GATS 2000" is much the same. Last year General Electric spokesman Tim Richards complained to the Bush administration, regarding goals for the GATS negotiations, "if there is only one provider of energy in the market, there will be no potential for some types of services such as brokering, marketing and trading services or for the creation of related financial products."<sup>1</sup> These activities were pursued by Enron and other fraudulent energy traders. Although there are some inefficiencies inherent in regulated monopolies, the alternative - unregulated energy traders and giant power producers - is far less efficient.

The unique characteristics inherent to the electricity sector dictate that the best way to produce and deliver electricity is having one locally controlled entity operating the entire process from generation to transmission to distribution. Chipping away at this monopoly in order to sell or contract-out aspects of its services to foreign investors removes transparency and, given past experience, is likely to result in higher prices for consumers because electricity is so easy to manipulate once several different providers -

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especially energy traders - are in control. It's troubling that the United States and the European Union not only want to include energy under the GATS but are also promoting energy trading in the "GATS 2000" negotiations.

### **GATS Locks in Deregulation, Locking Out Democracy**

The framework of GATS rules has the effect of making government decisions to privatize or deregulate its electricity sector irreversible. During a recent Bush administration "GATS dialogue," General Electric's Richards argued that one of the energy industry's key objectives under GATS is to "lock in" government decisions to deregulate.<sup>2</sup>

But what if a government - like any of the nine U.S. states that have repealed or delayed their deregulation laws over the last two years - decides to change its mind? Too bad. Under GATS rules, if a government wants to re-regulate in a manner that does not comply with commitments the United States has made at the WTO, the U.S. government is required to obtain permission from the other WTO member countries and then pay them compensation for lost business opportunities. The proposal would effectively handcuff elected officials, limiting their ability to protect consumers in the event of a California-style meltdown, which has cost consumers \$70 billion (and counting).

### **Requirements for Renewable Energy May Violate GATS**

Energy deregulation under GATS could also hinder the efforts of states and local governments to promote renewable energy sources. The Cambridge Energy Research Associates (CERA), which advises international energy companies, notes that the WTO is likely to find renewable electricity goals set by the states (so-called Renewable Portfolio Standards) to be illegal under GATS.

CERA claims that forcing electric companies to provide a certain amount of their power from renewable energy (either by investing in renewable energy sources or purchasing renewable energy on the market) unfairly discriminates against certain corporations and nations. While 13 states have renewable energy requirements, three states in particular - California, New Jersey and Wisconsin - may have theirs challenged under GATS because these states significantly limit the amount of hydropower that qualifies as a renewable energy source.<sup>3</sup> CERA argues that such a limitation discriminates against large Canadian hydropower companies and that this type of "discrimination" is forbidden under the GATS. The result: even if the policy is not formally challenged at the WTO, GATS countries could be intimidated into backing away from setting sound renewable energy policies.<sup>4</sup>

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<sup>1</sup> "Results of Services 2002: A Business-Government Dialogue on US Trade Expansion Objectives," U.S. Department of Commerce, Feb. 5, 2002, at 33.

<sup>2</sup> "Results of Services 2002: A Business-Government Dialogue on US Trade Expansion Objectives," U.S. Department of Commerce, Feb. 5, 2002, at 32.

<sup>3</sup> For California, *see* SB 1078, Chapter 516 (2002) available at: <http://www.energy.ca.gov/portfolio/documents/SB1078.PDF>. For New Jersey, *see* Peter C. Evans, "The WTO Doha Trade Agenda: A Primer for the Energy Industry," Cambridge Energy Research Associates, 2002, at 5. For Wisconsin, *see* Wisconsin Statutes 196.378 (2005) available at: <http://www.dsireusa.org/documents/Incentives/WI05R.htm>.

<sup>4</sup> *See* Peter C. Evans, "The WTO Doha Trade Agenda: A Primer for the Energy Industry," Cambridge Energy Research Associates, 2002.