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December 11, 2001

The Honorable Joe Barton, Chairman
The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Chairman Barton and Representative Boucher:

We appreciate the Subcommittee's interest in helping to address critical electric power issues facing the West and the nation. The Subcommittee's leadership in drafting HR 3406 is a productive step toward defining appropriate action by the federal government. We propose changes in four areas of the draft bill to make the legislation more workable and effective.

Western Governors are pursuing an energy policy roadmap that will protect our region from future electricity crises. Together with the Western industry, we are putting in place new institutions that are needed in our increasingly competitive Western electricity market. For example, last week the Western industry endorsed the formation of the new Western Electricity Coordinating Council which will set and enforce reliability standards in the Western Interconnection. Our experience convinces us that state leadership, with cooperation and support from the federal government, is the best route to reliable and secure electricity supplies.

To assure that the progress being made in the West is not inadvertently derailed by HR 3406, we offer the following observations and suggestions:

1. *Reliability.* HR 3406 is a step in the right direction, but it needs improvement. Reliability decisions are regional decisions. States must have a central role in the review of reliability standards and their enforcement. This role is best exercised on a regional basis. Therefore, HR 3406 needs to be amended to include a significant role for states when acting on an interconnection-wide basis.
2. *Intrusion into state retail sales jurisdiction.* In our resolutions (WGA Resolution 01-001 and WGA Resolution 00-009) we have cited many of the same priority issues as are addressed in HR 3406, including interconnection standards, net metering, improved demand

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response, and consumer protection. Our approach to achieving these common ends, however, differs from that embodied in HR 3406. States that have provided approved retail access have rules on “slamming” and “cramming.” We are sorting through the extensive experience we have gained in the West from the diverse demand response programs put in place in the past year. We will use this information to develop even better programs for the future. Such state regulatory actions are enabling a more robust Western electricity market. It would be counterproductive for HR 3406 to sweep away these efforts.

Our concerns about the protection of our citizens and businesses are further amplified by the record of how state innovations are treated by federal agencies that are granted the power to decide what is or is not consistent with federal policy. Interconnection standards, net metering, demand response, and consumer protection are examples of how the federal government should be assisting states, not undermining or overriding state efforts. Western Governors, FERC and the Department of Energy have held extensive meetings with stake holders throughout the region. Following these meetings our discussions with FERC commissioners and staff indicate that they do not believe this authority is necessary at this time.

3. *Regional Transmission Organizations.* Western Governors have supported the efforts of the Western industry to develop RTOs. However, we do not believe that FERC needs the additional authority in HR 3406 to mandate RTOs.
4. *Eminent domain.* No state in the Western Interconnection has ever denied a permit for an interstate transmission line. The major challenge in the West is securing rights-of-way across federal lands. Rather than directing FERC to override state and local transmission siting authority, the federal government should focus on improving the decision making processes it currently exercises over transmission rights-of-way and helping coordinate those processes with state siting and permitting processes. As our extensive experience in resolving energy and environmental issues makes clear, there is no more certain way of jeopardizing needed action than empowering a distant federal agency that lacks regional and local knowledge to override land use decisions that have been carefully developed by affected parties.

There has been some misunderstanding of the views of Western Governors on federal eminent domain in Washington, D.C. Let it be clear, we oppose granting FERC the power of eminent domain for siting transmission lines, directly or indirectly.

