

104TH CONGRESS
1ST SESSION

S. 1317

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1995, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, OCTOBER 10), 1995

Mr. D'AMATO (for himself, Mr. MURKOWSKI, Mr. DODD, Mr. JOHNSTON, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. DOLE, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1995, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Utility Holding
5 Company Act of 1995”.

1 TITLE I—REPEAL OF THE PUBLIC UTILITY
2 HOLDING COMPANY ACT OF 1935

3 **SEC. 101. PURPOSE.**

4 (a) The Public Utility Holding Company Act of 1935
5 was intended to facilitate the work of State and Federal
6 regulators by placing certain constraints on the activities
7 of holding company systems. Developments since 1935, in-
8 cluding changes in other regulation and in the industry
9 itself, have called into question the continued relevance of
10 the model of regulation established by the statute.

11 (b) There is, however, a continuing need for limited
12 Federal regulation in this area to ensure the rate protec-
13 tion of utility consumers. The Public Utility Holding Com-
14 pany Act of 1995 is intended to eliminate unnecessary reg-
15 ulation, yet still provide for consumer protection by provid-
16 ing for State commission access to books and records of
17 all companies in a holding company system, and for Fed-
18 eral audit authority and oversight of affiliate transactions,
19 to the extent that such activities affect rates, while, at the
20 same time, affording companies the flexibility required to
21 compete in today's energy markets.

1 **SEC. 102. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
2 **PANY ACT OF 1935.**

3 The Public Utility Holding Company Act of 1935, as
4 amended, is hereby repealed, effective one year from the
5 date of enactment of this Act.

6 **TITLE II—ENACTMENT OF THE PUBLIC**
7 **UTILITY HOLDING COMPANY ACT OF 1995**

8 **SEC. 201. PURPOSE.**

9 Limited Federal regulation is necessary to supple-
10 ment the work of State commissions for the continued rate
11 protection of electric and gas utility consumers. This Act
12 is intended to address these concerns by providing for
13 Federal and State access to books and records of all com-
14 panies in a holding company system and for federal over-
15 sight of affiliate transactions, to the extent that such ac-
16 tivities affect rates.

17 **SEC. 202. DEFINITIONS.**

18 (a) When used in this title:

19 (1) “Person” means an individual or company.

20 (2) “Company” means a corporation, joint
21 stock company, partnership, association, business
22 trust, organized group of persons, whether incor-
23 porated or not, or a receiver or receivers, trustee or
24 trustees of any of the foregoing.

25 (3) “Electric utility company” means any com-
26 pany that owns or operates facilities used for the

1 generation, transmission, or distribution of electric
2 energy for sale.

3 (4) “Gas utility company” means any company
4 that owns or operates facilities used for distribution
5 at retail (other than the distribution only in enclosed
6 portable containers) of natural or manufactured gas
7 for heat, light or power.

8 (5) “Public utility company” means an electric
9 utility company or gas utility company but does not
10 mean a qualifying facility as defined in the Public
11 Utility Regulatory Policies Act of 1992, or an ex-
12 empt wholesale generator or a foreign utility com-
13 pany defined by the Energy Policy Act of 1992.

14 (6) “Holding company” means (A) any com-
15 pany that directly or indirectly owns, controls, or
16 holds with power to vote, 10 percent or more of the
17 outstanding voting securities of a public utility com-
18 pany or of a holding company of any public utility
19 company; and (B) any person, determined by the
20 Commission, after notice and opportunity for hear-
21 ing, to exercise directly or indirectly (either alone or
22 pursuant to an arrangement or understanding with
23 one or more persons) such a controlling influence
24 over the management or policies of any public utility
25 or holding company as to make it necessary or ap-

1 appropriate for the protection of consumers with re-
2 spect to rates that such person be subject to the ob-
3 ligations, duties, and liabilities imposed in this title
4 upon holding companies.

5 (7) “Subsidiary company” of a holding com-
6 pany means (A) any company 10 percent or more of
7 the outstanding voting securities of which are di-
8 rectly or indirectly owned, controlled, or held with
9 power to vote, by such holding company; and (B)
10 any person the management or policies of which the
11 Commission, after notice and opportunity for hear-
12 ing, determines to be subject to a controlling influ-
13 ence, directly or indirectly, by such holding company
14 (either alone or pursuant to an arrangement or un-
15 derstanding with one or more other persons) so as
16 to make it necessary for the protection of consumers
17 with respect to rates that such person be subject to
18 the obligations, duties, and liabilities imposed in this
19 title upon subsidiary companies of holding compa-
20 nies.

21 (8) “Holding company system” means a hold-
22 ing company together with its subsidiary companies.

23 (9) “Associate company” of a company means
24 any company in the same holding company system
25 with such company.

1 (10) “Affiliate” of a company means any com-
2 pany 5 percent or more of whose outstanding voting
3 securities are owned, controlled, or held with power
4 to vote, directly or indirectly, by such company.

5 (11) “Voting security” means any security pres-
6 ently entitling the owner or holder thereof to vote in
7 the direction or management of the affairs of a com-
8 pany.

9 (12) “Commission” means the Federal Energy
10 Regulatory Commission.

11 (13) “State Commission” means any commis-
12 sion, board, agency, or officer, by whatever name
13 designated, of a State, municipality, or other politi-
14 cal subdivision of a State that under the law of such
15 State has jurisdiction to regulate public utility com-
16 panies.

17 (b) No provision in this Act shall apply to, or be
18 deemed to include: (1) the United States, (2) a State or
19 any political subdivision of a State, (3) any foreign govern-
20 mental authority not operating in the United States, (4)
21 any agency, authority, or instrumentality of any of the
22 foregoing, or (5) any officer, agent, or employee of any
23 of the foregoing acting as such in the course of his official
24 duty.

1 **SEC. 203. EXEMPTIONS.**

2 (a) The provisions of this Act shall not apply to any
3 person previously exempted, by rule or order, from regula-
4 tion under the Public Utility Holding Company Act of
5 1935 and such person shall continue to be exempted from
6 the provisions of this Act: *Provided*, That the Commission
7 may institute proceedings to terminate such exemption if
8 the termination of such exemption would be necessary for
9 regulating the rates of a public utility company and nec-
10 essary for the protection of consumers.

11 (b) The Commission, by rules and regulations, or by
12 order upon application, may conditionally or uncondition-
13 ally exempt any person or transaction, or any class or
14 classes of persons or transactions, from any provision or
15 provisions of this title or of any rule or regulation there-
16 under, if the Commission finds that regulation of such per-
17 son or transaction is not relevant to the rates of a public
18 utility company; in considering whether to grant such an
19 exemption, the Commission shall consult with the affected
20 State commissions.

21 **SEC. 204. FEDERAL ACCESS TO BOOKS AND RECORDS.**

22 (a) Every holding company and subsidiary company
23 thereof shall maintain, and make available to the Commis-
24 sion, such books, records, accounts, and other documents
25 as the Commission deems relevant to costs incurred by
26 a public utility company that is an associate company of

1 such holding company and necessary or appropriate for
2 the protection of consumers with respect to rates.

3 (b) Every affiliate of a holding company or of any
4 subsidiary company thereof shall maintain, and make
5 available to the Commission, such books, records, ac-
6 counts, and other documents with respect to any trans-
7 action with another affiliate, as the Commission deems rel-
8 evant to costs incurred by a public utility company that
9 is an associate company of such holding company and nec-
10 essary or appropriate for the protection of consumers with
11 respect to rates.

12 (c) The Commission may examine the books and
13 records of any company in a holding company system, or
14 any affiliate thereof, as the Commission deems relevant
15 to costs incurred by a public utility company within such
16 holding company system and necessary or appropriate for
17 the protection of consumers with respect to rates.

18 (d) No member, officer, or employee of the Commis-
19 sion shall divulge any fact or information that may come
20 to his knowledge during the course of examination of
21 books, accounts, or other information as hereinbefore pro-
22 vided, except insofar as he may be directed by the Com-
23 mission or by a court.

1 **SEC. 205. STATE ACCESS TO BOOKS AND RECORDS.**

2 (a) Upon the written request of a State commission
3 having jurisdiction to regulate a public utility company in
4 a holding company system, and subject to such terms and
5 conditions as may be necessary and appropriate to safe-
6 guard against unwarranted disclosure to the public of any
7 trade secrets or sensitive commercial information, a hold-
8 ing company or its associate company or affiliate thereof,
9 wherever located, shall produce for inspection such books
10 and records as have been identified in reasonable detail
11 in a proceeding before the State commission, are relevant
12 to costs incurred by such public utility company and are
13 necessary for the effective discharge of the State commis-
14 sion's responsibilities with respect to such proceeding.

15 (b) Nothing in this section shall preempt applicable
16 State law concerning the provision of records and other
17 information, or in any way limit a State's rights to obtain
18 books and records and other information under Federal
19 law, contract, or otherwise.

20 **SEC. 206. AFFILIATE TRANSACTIONS.**

21 Nothing in this Act shall preclude the Commission
22 or a State commission from exercising its jurisdiction
23 under otherwise applicable law to determine whether a
24 public utility company may recover in rates any costs of
25 an activity performed by an associate company, or any

1 costs of goods or services acquired by such public utility
2 company from an associate company.

3 **SEC. 207. EFFECT ON OTHER REGULATION.**

4 Nothing in this Act shall preclude a State commission
5 from exercising its jurisdiction under otherwise applicable
6 law to protect utility consumers.

7 **SEC. 208. ENFORCEMENT.**

8 The Commission shall have the same powers as set
9 forth in Sections 306 through 317 of the Federal Power
10 Act (16 U.S.C. 825d–825p) to enforce the provisions of
11 this Act.

12 **SEC. 209. SAVINGS PROVISION.**

13 Nothing in this Act prohibits a person from engaging
14 in activities in which it is legally engaged or authorized
15 to engage on the effective date of the Public Utility Hold-
16 ing Company Act of 1995, provided that it continues to
17 comply with the terms of any authorization, whether by
18 rule or by order.

19 **SEC. 210. IMPLEMENTATION.**

20 The Commission shall promulgate regulations nec-
21 essary or appropriate to implement this Act not later than
22 one year after the date of the enactment of this title.

23 **SEC. 211. RESOURCES**

24 All books and records that relate primarily to the
25 function hereby vested in the Commission shall be trans-

1 ferred from the Securities and Exchange Commission to
2 the Commission. It is the sense of the Congress that, sub-
3 ject to the approval of the Director of the Office of Man-
4 agement and Budget and the Chairman of the Securities
5 and Exchange Commission all personnel of the Office of
6 Public Utility Regulation of the Securities and Exchange
7 Commission as of the date of enactment of this title should
8 be transferred to the Commission.

9 **SEC. 212. EFFECTIVE DATE.**

10 This Act shall take effect one year after the date of
11 enactment.

12 **SEC. 213. SEVERABILITY.**

13 If any provision of this Act, or the application of such
14 provision to any person or circumstance, shall be held in-
15 valid, the remainder of the Act, and the application of
16 such provision to persons or circumstances other than
17 those as to which it is held invalid, shall not be affected
18 thereby.

19 TITLE III—CONFORMING CHANGES TO OTHER
20 STATUTES

21 **SEC. 301. FEDERAL POWER ACT.**

22 Section 318 of the Federal Power Act (16 U.S.C.
23 285g) if hereby repealed.

