

105TH CONGRESS
2D SESSION

H. R. 3976

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1998, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1998

Mr. TAUZIN (for himself, Mr. BARTON of Texas, Mr. BILBRAY, Mr. COOKSEY, Mr. DOOLITTLE, Mr. JOHN, Mr. MCCREERY, Mr. NORWOOD, Mr. PARKER, Mr. WICKER, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1998, 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 1998”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) the Public Utility Holding Company Act of
9 1935 was intended to facilitate the work of Federal

1 and State regulators by placing certain constraints
2 on the activities of holding company systems;

3 (2) developments since 1935, including changes
4 in other regulation and in the electric and gas indus-
5 tries, have called into question the continued rel-
6 evance of the model of regulation established by that
7 Act;

8 (3) there is a continuing need for limited Fed-
9 eral and State regulation in order to ensure the rate
10 protection of utility customers; and

11 (4) limited Federal regulation is necessary to
12 supplement the work of State commissions for the
13 continued rate protection of electric and gas utility
14 customers.

15 (b) PURPOSES.—The purposes of this Act are—

16 (1) to eliminate unnecessary regulation, yet
17 continue to provide for consumer protection by facili-
18 tating existing rate regulatory authority through im-
19 proved Federal and State commission access to
20 books and records of all companies in a holding com-
21 pany system, to the extent that such information is
22 relevant to rates paid by utility customers, while af-
23 fording companies the flexibility required to compete
24 in the energy markets; and

1 (2) to address protection of electric and gas
2 utility customers by providing for Federal and State
3 access to books and records of all companies in a
4 holding company system that are relevant to utility
5 rates.

6 **SEC. 3. DEFINITIONS.**

7 For purposes of this Act—

8 (1) the term “affiliate” of a company means
9 any company 5 percent or more of the outstanding
10 voting securities of which are owned, controlled, or
11 held with power to vote, directly or indirectly, by
12 such company;

13 (2) the term “associate company” of a company
14 means any company in the same holding company
15 system with such company;

16 (3) the term “Commission” means the Federal
17 Energy Regulatory Commission;

18 (4) the term “company” means a corporation,
19 partnership, association, joint stock company, busi-
20 ness trust, or any organized group of persons,
21 whether incorporated or not, or a receiver, trustee,
22 or other liquidating agent of any of the foregoing;

23 (5) the term “electric utility company” means
24 any company that owns or operates facilities used

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

3 (6) the terms “exempt wholesale generator”
4 and “foreign utility company” have the same mean-
5 ings as in sections 32 and 33, respectively, of the
6 Public Utility Holding Company Act of 1935, as
7 those sections existed on the day before the effective
8 date of this Act;

9 (7) the term “gas utility company” means any
10 company that owns or operates facilities used for
11 distribution at retail (other than the distribution
12 only in enclosed portable containers or distribution
13 to tenants or employees of the company operating
14 such facilities for their own use and not for resale)
15 of natural or manufactured gas for heat, light, or
16 power;

17 (8) the term “holding company” means—

18 (A) any company that directly or indirectly
19 owns, controls, or holds, with power to vote, 10
20 percent or more of the outstanding voting secu-
21 rities of a public utility company or of a holding
22 company of any public utility company; and

23 (B) any person, determined by the Com-
24 mission, after notice and opportunity for hear-
25 ing, to exercise directly or indirectly (either

1 alone or pursuant to an arrangement or under-
2 standing with one or more persons) such a con-
3 trolling influence over the management or poli-
4 cies of any public utility company or holding
5 company as to make it necessary or appropriate
6 for the rate protection of utility customers with
7 respect to rates that such person be subject to
8 the obligations, duties, and liabilities imposed
9 by this Act upon holding companies;

10 (9) the term “holding company system” means
11 a holding company, together with its subsidiary com-
12 panies;

13 (10) the term “jurisdictional rates” means
14 rates established by the Commission for the trans-
15 mission of electric energy in interstate commerce,
16 the sale of electric energy at wholesale in interstate
17 commerce, the transportation of natural gas in inter-
18 state commerce, and the sale in interstate commerce
19 of natural gas for resale for ultimate public con-
20 sumption for domestic, commercial, industrial, or
21 any other use;

22 (11) the term “natural gas company” means a
23 person engaged in the transportation of natural gas
24 in interstate commerce or the sale of such gas in
25 interstate commerce for resale;

1 (12) the term “person” means an individual or
2 company;

3 (13) the term “public utility” means any person
4 who owns or operates facilities used for transmission
5 of electric energy in interstate commerce or sales of
6 electric energy at wholesale in interstate commerce;

7 (14) the term “public utility company” means
8 an electric utility company or a gas utility company;

9 (15) the term “State commission” means any
10 commission, board, agency, or officer, by whatever
11 name designated, of a State, municipality, or other
12 political subdivision of a State that, under the laws
13 of such State, has jurisdiction to regulate public util-
14 ity companies;

15 (16) the term “subsidiary company” of a hold-
16 ing company means—

17 (A) any company, 10 percent or more of
18 the outstanding voting securities of which are
19 directly or indirectly owned, controlled, or held
20 with power to vote, by such holding company;
21 and

22 (B) any person, the management or poli-
23 cies of which the Commission, after notice and
24 opportunity for hearing, determines to be sub-
25 ject to a controlling influence, directly or indi-

1 rectly, by such holding company (either alone or
2 pursuant to an arrangement or understanding
3 with one or more other persons) so as to make
4 it necessary for the rate protection of utility
5 customers with respect to rates that such per-
6 son be subject to the obligations, duties, and li-
7 abilities imposed by this Act upon subsidiary
8 companies of holding companies; and

9 (17) the term “voting security” means any se-
10 curity presently entitling the owner or holder thereof
11 to vote in the direction or management of the affairs
12 of a company.

13 **SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
14 **PANY ACT OF 1935.**

15 The Public Utility Holding Company Act of 1935 (15
16 U.S.C. 79a et seq.) is repealed, effective 12 months after
17 the date of enactment of this Act.

18 **SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.**

19 (a) IN GENERAL.—Each holding company and each
20 associate company thereof shall maintain, and shall make
21 available to the Commission, such books, accounts, memo-
22 randa, and other records as the Commission deems to be
23 relevant to costs incurred by a public utility or natural
24 gas company that is an associate company of such holding
25 company and necessary or appropriate for the protection

1 of utility customers with respect to jurisdictional rates for
2 the transmission of electric energy in interstate commerce,
3 the sale of electric energy at wholesale in interstate com-
4 merce, the transportation of natural gas in interstate com-
5 merce, and the sale in interstate commerce of natural gas
6 for resale for ultimate public consumption for domestic,
7 commercial, industrial, or any other use.

8 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
9 ing company or of any subsidiary company of a holding
10 company shall maintain, and make available to the Com-
11 mission, such books, accounts, memoranda, and other
12 records with respect to any transaction with another affili-
13 ate, as the Commission deems to be relevant to costs in-
14 curred by a public utility or natural gas company that is
15 an associate company of such holding company and nec-
16 essary or appropriate for the protection of utility cus-
17 tomers with respect to jurisdictional rates.

18 (c) HOLDING COMPANY SYSTEMS.—The Commission
19 may examine the books, accounts, memoranda, and other
20 records of any company in a holding company system, or
21 any affiliate thereof, as the Commission deems to be rel-
22 evant to costs incurred by a public utility or natural gas
23 company within such holding company system and nec-
24 essary or appropriate for the protection of utility cus-
25 tomers with respect to jurisdictional rates.

1 (d) CONFIDENTIALITY.—No member, officer, or em-
2 ployee of the Commission shall divulge any fact or infor-
3 mation that may come to his or her knowledge during the
4 course of examination of books, accounts, memoranda, or
5 other records as provided in this section, except as may
6 be directed by the Commission or by a court of competent
7 jurisdiction.

8 **SEC. 6. STATE ACCESS TO BOOKS AND RECORDS.**

9 (a) IN GENERAL.—Upon the written request of a
10 State commission having jurisdiction to regulate a public
11 utility company in a holding company system, and subject
12 to such terms and conditions as may be necessary and ap-
13 propriate to safeguard against unwarranted disclosure to
14 the public of any trade secrets or sensitive commercial in-
15 formation, a holding company or its associate company or
16 affiliate thereof, wherever located, shall produce for in-
17 spection books, accounts, memoranda, and other records
18 that—

19 (1) have been identified in reasonable detail in
20 a proceeding before the State commission;

21 (2) the State commission deems are relevant to
22 costs incurred by such public utility company; and

23 (3) are necessary for the effective discharge of
24 the responsibilities of the State commission with re-
25 spect to such proceeding.

1 (b) EFFECT ON STATE LAW.—Nothing in this section
2 shall preempt applicable State law concerning the provi-
3 sion of books, records, or any other information, or in any
4 way limit the rights of any State to obtain books, records,
5 or any other information under Federal law, contract, or
6 otherwise.

7 (c) COURT JURISDICTION.—Any United States dis-
8 trict court located in the State in which the State commis-
9 sion referred to in subsection (a) is located shall have ju-
10 risdiction to enforce compliance with this section.

11 **SEC. 7. EXEMPTION AUTHORITY.**

12 (a) RULEMAKING.—Not later than 90 days after the
13 date of enactment of this Act, the Commission shall pro-
14 mulgate a final rule to exempt from the requirements of
15 section 5 any person that is a holding company, solely with
16 respect to one or more—

17 (1) qualifying facilities under the Public Utility
18 Regulatory Policies Act of 1978;

19 (2) exempt wholesale generators; or

20 (3) foreign utility companies.

21 (b) OTHER AUTHORITY.—If, upon application or
22 upon its own motion, the Commission finds that the books,
23 records, accounts, memoranda, and other records of any
24 person are not relevant to the jurisdictional rates of a pub-
25 lic utility company, or if the Commission finds that any

1 class of transactions is not relevant to the jurisdictional
2 rates of a public utility company, the Commission shall
3 exempt such person or transaction from the requirements
4 of section 5.

5 **SEC. 8. AFFILIATE TRANSACTIONS.**

6 Nothing in this Act shall preclude the Commission
7 or a State commission from exercising its jurisdiction
8 under otherwise applicable law to determine whether a
9 public utility company may recover in rates any costs of
10 an activity performed by an associate company, or any
11 costs of goods or services acquired by such public utility
12 company from an associate company.

13 **SEC. 9. APPLICABILITY.**

14 No provision of this Act shall apply to, or be deemed
15 to include—

16 (1) the United States;

17 (2) a State or any political subdivision of a
18 State;

19 (3) any foreign governmental authority not op-
20 erating in the United States;

21 (4) any agency, authority, or instrumentality of
22 any entity referred to in paragraph (1), (2), or (3);

23 or

1 (5) any officer, agent, or employee of any entity
2 referred to in paragraph (1), (2), or (3) acting as
3 such in the course of his or her official duty.

4 **SEC. 10. EFFECT ON OTHER REGULATIONS.**

5 Nothing in this Act precludes the Commission or a
6 State commission from exercising its jurisdiction under
7 otherwise applicable law to protect utility customers.

8 **SEC. 11. ENFORCEMENT.**

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

13 **SEC. 12. SAVINGS PROVISIONS.**

14 (a) IN GENERAL.—Nothing in this Act prohibits a
15 person from engaging in or continuing to engage in activi-
16 ties or transactions in which it is legally engaged or au-
17 thorized to engage on the effective date of this Act, if that
18 person continues to comply with the terms of any such
19 authorization, whether by rule or by order.

20 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
21 Nothing in this Act limits the authority of the Commission
22 under the Federal Power Act (16 U.S.C. 791a et seq.)
23 (including section 301 of that Act) or the Natural Gas
24 Act (15 U.S.C. 717 et seq.) (including section 8 of that
25 Act).

1 **SEC. 13. IMPLEMENTATION.**

2 Not later than 12 months after the date of enactment
3 of this Act, the Commission shall—

4 (1) promulgate such regulations as may be nec-
5 essary or appropriate to implement this Act; and

6 (2) submit to the Congress detailed rec-
7 ommendations on technical and conforming amend-
8 ments to Federal law necessary to carry out this Act
9 and the amendments made by this Act.

10 **SEC. 14. TRANSFER OF RESOURCES.**

11 All books and records that relate primarily to the
12 functions transferred to the Commission under this Act
13 shall be transferred from the Securities and Exchange
14 Commission to the Commission.

15 **SEC. 15. EFFECTIVE DATE.**

16 This Act shall take effect 12 months after the date
17 of enactment of this Act.

18 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such funds
20 as may be necessary to carry out this Act.

21 **SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL**
22 **POWER ACT.**

23 Section 318 of the Federal Power Act (16 U.S.C.
24 825q) is repealed.

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