

104TH CONGRESS  
2D SESSION

# H. R. 3601

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1996, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 1996

Mr. TAUZIN (for himself, Mr. BARTON of Texas, Mr. HAYES, Mr. NORWOOD, Mr. LINDER, Mr. OXLEY, Mr. STEARNS, Mr. TOWNS, and Mr. BAKER of Louisiana) introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1996, 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 1996”.

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 1996 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 4 amended, is hereby repealed, effective one year from the  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 1996**

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 1996, 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-

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

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

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285g) if hereby repealed.

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