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107TH CONGRESS
1ST SESSION

S. 206

[Report No. 107–15]

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 2001, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2001

Mr. SHELBY (for himself, Mr. MURKOWSKI, Mr. SARBANES, Mr. GRAMM, Mr. DODD, Mr. LOTT, Mr. CRAIG, Mr. CRAPO, Mr. BROWNBACK, Mr. COCHRAN, Mr. GRAHAM, Mr. BUNNING, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

MAY 9, 2001

Reported by Mr. GRAMM, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To repeal the Public Utility Holding Company Act of 1935,
to enact the Public Utility Holding Company Act of
2001, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Utility Holding
3 Company Act of 2001”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) **FINDINGS.**—Congress finds that—

6 (1) the Public Utility Holding Company Act of
7 1935 was intended to facilitate the work of Federal
8 and State regulators by placing certain constraints
9 on the activities of holding company systems;

10 (2) developments since 1935, including changes
11 in other regulation and in the electric and gas indus-
12 tries, have called into question the continued rel-
13 evance of the model of regulation established by that
14 Act;

15 (3) there is a continuing need for State regula-
16 tion in order to ensure the rate protection of utility
17 customers; and

18 (4) limited Federal regulation is necessary to
19 supplement the work of State commissions for the
20 continued rate protection of electric and gas utility
21 customers.

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

23 (1) to eliminate unnecessary regulation, yet
24 continue to provide for consumer protection by facili-
25 tating existing rate regulatory authority through im-
26 proved Federal and State commission access to

1 books and records of all companies in a holding com-
 2 pany system, to the extent that such information is
 3 relevant to rates paid by utility customers, while af-
 4 fording companies the flexibility required to compete
 5 in the energy markets; and

6 ~~(2) to address protection of electric and gas~~
 7 ~~utility customers by providing for Federal and State~~
 8 ~~access to books and records of all companies in a~~
 9 ~~holding company system that are relevant to utility~~
 10 ~~rates.~~

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act—

13 ~~(1) the term “affiliate” of a company means~~
 14 ~~any company, 5 percent or more of the outstanding~~
 15 ~~voting securities of which are owned, controlled, or~~
 16 ~~held with power to vote, directly or indirectly, by~~
 17 ~~such company;~~

18 ~~(2) the term “associate company” of a company~~
 19 ~~means any company in the same holding company~~
 20 ~~system with such company;~~

21 ~~(3) the term “Commission” means the Federal~~
 22 ~~Energy Regulatory Commission;~~

23 ~~(4) the term “company” means a corporation,~~
 24 ~~partnership, association, joint stock company, busi-~~
 25 ~~ness trust, or any organized group of persons;~~

1 whether incorporated or not, or a receiver, trustee,
 2 or other liquidating agent of any of the foregoing;

3 ~~(5) the term “electric utility company” means~~
 4 ~~any company that owns or operates facilities used~~
 5 ~~for the generation, transmission, or distribution of~~
 6 ~~electric energy for sale;~~

7 ~~(6) the terms “exempt wholesale generator”~~
 8 ~~and “foreign utility company” have the same mean-~~
 9 ~~ings as in sections 32 and 33, respectively, of the~~
 10 ~~Public Utility Holding Company Act of 1935 (15~~
 11 ~~U.S.C. 79z-5a, 79z-5b), as those sections existed on~~
 12 ~~the day before the effective date of this Act;~~

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

21 ~~(8) the term “holding company” means—~~

22 ~~(A) any company that directly or indirectly~~
 23 ~~owns, controls, or holds, with power to vote, 10~~
 24 ~~percent or more of the outstanding voting secu-~~

rities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

(9) the term “holding company system” means a holding company, together with its subsidiary companies;

(10) the term “jurisdictional rates” means rates established by the Commission for the transmission of electric energy in interstate commerce; the sale of electric energy at wholesale in interstate commerce; the transportation of natural gas in interstate commerce; and the sale in interstate commerce of natural gas for resale for ultimate public con-

1 sumption for domestic, commercial, industrial, or
2 any other use;

3 (11) the term “natural gas company” means a
4 person engaged in the transportation of natural gas
5 in interstate commerce or the sale of such gas in
6 interstate commerce for resale;

7 (12) the term “person” means an individual or
8 company;

9 (13) the term “public utility” means any person
10 who owns or operates facilities used for transmission
11 of electric energy in interstate commerce or sales of
12 electric energy at wholesale in interstate commerce;

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

15 (15) the term “State commission” means any
16 commission, board, agency, or officer, by whatever
17 name designated, of a State, municipality, or other
18 political subdivision of a State that, under the laws
19 of such State, has jurisdiction to regulate public util-
20 ity companies;

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

23 (A) any company, 10 percent or more of
24 the outstanding voting securities of which are
25 directly or indirectly owned, controlled, or held

with power to vote, by such holding company;
and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon subsidiary companies of holding companies; and

(17) the term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make

1 available to the Commission, such books, accounts, memo-
2 randa, and other records as the Commission deems to be
3 relevant to costs incurred by a public utility or natural
4 gas company that is an associate company of such holding
5 company and necessary or appropriate for the protection
6 of utility customers with respect to jurisdictional rates.

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

17 (c) HOLDING COMPANY SYSTEMS.—The Commission
18 may examine the books, accounts, memoranda, and other
19 records of any company in a holding company system, or
20 any affiliate thereof, as the Commission deems to be rel-
21 evant to costs incurred by a public utility or natural gas
22 company within such holding company system and nec-
23 essary or appropriate for the protection of utility cus-
24 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, the holding
 12 company or any associate company or affiliate thereof,
 13 other than such public utility company, wherever located,
 14 shall produce for inspection books, accounts, memoranda,
 15 and other records that—

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

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

20 (3) are necessary for the effective discharge of
 21 the responsibilities of the State commission with re-
 22 spect to such proceeding.

23 (b) ~~LIMITATION.~~—Subsection (a) does not apply to
 24 any person that is a holding company solely by reason of

1 ownership of one or more qualifying facilities under the
 2 Public Utility Regulatory Policies Act of 1978.

3 (c) ~~CONFIDENTIALITY OF INFORMATION.~~—The pro-
 4 duction of books, accounts, memoranda, and other records
 5 under subsection (a) shall be subject to such terms and
 6 conditions as may be necessary and appropriate to safe-
 7 guard against unwarranted disclosure to the public of any
 8 trade secrets or sensitive commercial information.

9 (d) ~~EFFECT ON STATE LAW.~~—Nothing in this sec-
 10 tion shall preempt applicable State law concerning the pro-
 11 vision of books, records, or any other information, or in
 12 any way limit the rights of any State to obtain books,
 13 records, or any other information under any other Federal
 14 law, contract, or otherwise.

15 (e) ~~COURT JURISDICTION.~~—Any United States dis-
 16 trict court located in the State in which the State commis-
 17 sion referred to in subsection (a) is located shall have ju-
 18 risdiction to enforce compliance with this section.

19 **SEC. 7. EXEMPTION AUTHORITY.**

20 (a) ~~RULEMAKING.~~—Not later than 90 days after the
 21 effective date of this Act, the Commission shall promul-
 22 gate a final rule to exempt from the requirements of sec-
 23 tion 5 any person that is a holding company, solely with
 24 respect to one or more—

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

3 ~~(2) exempt wholesale generators; or~~

4 ~~(3) foreign utility companies.~~

5 (b) OTHER AUTHORITY.—The Commission shall ex-
6 empt a person or transaction from the requirements of
7 section 5, if, upon application or upon the motion of the
8 Commission—

9 (1) the Commission finds that the books,
10 records, accounts, memoranda, and other records of
11 any person are not relevant to the jurisdictional
12 rates of a public utility or natural gas company; or

13 (2) the Commission finds that any class of
14 transactions is not relevant to the jurisdictional
15 rates of a public utility or natural gas company.

16 **SEC. 8. AFFILIATE TRANSACTIONS.**

17 Nothing in this Act shall preclude the Commission
18 or a State commission from exercising its jurisdiction
19 under otherwise applicable law to determine whether a
20 public utility company, public utility, or natural gas com-
21 pany may recover in rates any costs of an activity per-
22 formed by an associate company, or any costs of goods
23 or services acquired by such public utility company from
24 an associate company.

1 **SEC. 9. APPLICABILITY.**

2 No provision of this Act shall apply to, or be deemed
3 to include—

4 (1) the United States;

5 (2) a State or any political subdivision of a
6 State;

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

9 (4) any agency, authority, or instrumentality of
10 any entity referred to in paragraph (1), (2), or (3);
11 or

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

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

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

19 **SEC. 11. ENFORCEMENT.**

20 The Commission shall have the same powers as set
21 forth in sections 306 through 317 of the Federal Power
22 Act (16 U.S.C. 825e–825p) to enforce the provisions of
23 this Act.

24 **SEC. 12. SAVINGS PROVISIONS.**

25 (a) IN GENERAL.—Nothing in this Act prohibits a
26 person from engaging in or continuing to engage in activi-

1 ties or transactions in which it is legally engaged or au-
 2 thorized to engage on the effective date of this Act.

3 ~~(b) EFFECT ON OTHER COMMISSION AUTHORITY.—~~

4 Nothing in this Act limits the authority of the Commission
 5 under the Federal Power Act (16 U.S.C. 791a et seq.)
 6 (including section 301 of that Act) or the Natural Gas
 7 Act (15 U.S.C. 717 et seq.) (including section 8 of that
 8 Act).

9 **SEC. 13. IMPLEMENTATION.**

10 Not later than 18 months after the date of enactment
 11 of this Act, the Commission shall—

12 (1) promulgate such regulations as may be nec-
 13 essary or appropriate to implement this Act (other
 14 than section 6); and

15 (2) submit to the Congress detailed rec-
 16 ommendations on technical and conforming amend-
 17 ments to Federal law necessary to carry out this Act
 18 and the amendments made by this Act.

19 **SEC. 14. TRANSFER OF RESOURCES.**

20 All books and records that relate primarily to the
 21 functions transferred to the Commission under this Act
 22 shall be transferred from the Securities and Exchange
 23 Commission to the Commission.

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

2 This Act shall take effect 18 months after the date
3 of enactment of this Act.

4 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

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

7 **SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL**
8 **POWER ACT.**

9 Section 318 of the Federal Power Act (16 U.S.C.
10 825q) is repealed.

11 **SECTION 1. SHORT TITLE.**

12 (a) *SHORT TITLE; TABLE OF CONTENTS.*—This Act
13 may be cited as the “Public Utility Holding Company Act
14 of 2001”.

15 (b) *TABLE OF CONTENTS.*—The table of contents for
16 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. Repeal of the Public Utility Holding Company Act of 1935.

Sec. 5. Federal access to books and records.

Sec. 6. State access to books and records.

Sec. 7. Exemption authority.

Sec. 8. Affiliate transactions.

Sec. 9. Applicability.

Sec. 10. Effect on other regulations.

Sec. 11. Enforcement.

Sec. 12. Savings provisions.

Sec. 13. Implementation.

Sec. 14. Transfer of resources.

*Sec. 15. Inter-agency review of competition in the wholesale and retail markets
for electric energy.*

Sec. 16. GAO study on implementation.

Sec. 17. Effective date.

Sec. 18. Authorization of appropriations.

Sec. 19. Conforming amendment to the Federal Power Act.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.*—Congress finds that—

3 (1) *the Public Utility Holding Company Act of*
4 *1935 was intended to facilitate the work of Federal*
5 *and State regulators by placing certain constraints*
6 *on the activities of holding company systems;*

7 (2) *developments since 1935, including changes*
8 *in other regulation and in the electric and gas indus-*
9 *tries, have called into question the continued relevance*
10 *of the model of regulation established by that Act;*

11 (3) *there is a continuing need for State regula-*
12 *tion in order to ensure the rate protection of utility*
13 *customers; and*

14 (4) *limited Federal regulation is necessary to*
15 *supplement the work of State commissions for the*
16 *continued rate protection of electric and gas utility*
17 *customers.*

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

19 (1) *to eliminate unnecessary regulation, yet con-*
20 *tinue to provide for consumer protection by facili-*
21 *tating existing rate regulatory authority through im-*
22 *proved Federal and State commission access to books*
23 *and records of all companies in a holding company*
24 *system, to the extent that such information is relevant*
25 *to rates paid by utility customers, while affording*

1 *companies the flexibility required to compete in the*
 2 *energy markets; and*

3 *(2) to address protection of electric and gas util-*
 4 *ity customers by providing for Federal and State ac-*
 5 *cess to books and records of all companies in a hold-*
 6 *ing company system that are relevant to utility rates.*

7 **SEC. 3. DEFINITIONS.**

8 *For purposes of this Act—*

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

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

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

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

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

1 *the generation, transmission, or distribution of elec-*
 2 *tric energy for sale;*

3 *(6) the terms “exempt wholesale generator” and*
 4 *“foreign utility company” have the same meanings as*
 5 *in sections 32 and 33, respectively, of the Public Util-*
 6 *ity Holding Company Act of 1935 (15 U.S.C. 79z–5a,*
 7 *79z–5b), as those sections existed on the day before the*
 8 *effective date of this Act;*

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

16 *(8) the term “holding company” means—*

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

22 *(B) any person, determined by the Commis-*
 23 *sion, after notice and opportunity for hearing, to*
 24 *exercise directly or indirectly (either alone or*
 25 *pursuant to an arrangement or understanding*

1 *with one or more persons) such a controlling in-*
2 *fluence over the management or policies of any*
3 *public utility company or holding company as to*
4 *make it necessary or appropriate for the rate*
5 *protection of utility customers with respect to*
6 *rates that such person be subject to the obliga-*
7 *tions, duties, and liabilities imposed by this Act*
8 *upon holding companies;*

9 *(9) the term “holding company system” means a*
10 *holding company, together with its subsidiary compa-*
11 *nies;*

12 *(10) the term “jurisdictional rates” means rates*
13 *established by the Commission for the transmission of*
14 *electric energy in interstate commerce, the sale of elec-*
15 *tric energy at wholesale in interstate commerce, the*
16 *transportation of natural gas in interstate commerce,*
17 *and the sale in interstate commerce of natural gas for*
18 *resale for ultimate public consumption for domestic,*
19 *commercial, industrial, or any other use;*

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

24 *(12) the term “person” means an individual or*
25 *company;*

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

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

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

13 (16) the term “subsidiary company” of a holding
14 company means—

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

20 (B) any person, the management or policies
21 of which the Commission, after notice and oppor-
22 tunity for hearing, determines to be subject to a
23 controlling influence, directly or indirectly, by
24 such holding company (either alone or pursuant
25 to an arrangement or understanding with one or

1 more other persons) so as to make it necessary
 2 for the rate protection of utility customers with
 3 respect to rates that such person be subject to the
 4 obligations, duties, and liabilities imposed by
 5 this Act upon subsidiary companies of holding
 6 companies; and

7 (17) the term “voting security” means any secu-
 8 rity presently entitling the owner or holder thereof to
 9 vote in the direction or management of the affairs of
 10 a company.

11 **SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
 12 **PANY ACT OF 1935.**

13 *The Public Utility Holding Company Act of 1935 (15*
 14 *U.S.C. 79 et seq.) is repealed.*

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

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

24 (b) *AFFILIATE COMPANIES.*—Each affiliate of a hold-
 25 ing company or of any subsidiary company of a holding

1 company shall maintain, and shall make available to the
 2 Commission, such books, accounts, memoranda, and other
 3 records with respect to any transaction with another affil-
 4 iate, as the Commission deems to be relevant to costs in-
 5 curred by a public utility or natural gas company that is
 6 an associate company of such holding company and nec-
 7 essary or appropriate for the protection of utility customers
 8 with respect to jurisdictional rates.

9 (c) *HOLDING COMPANY SYSTEMS.*—The Commission
 10 may examine the books, accounts, memoranda, and other
 11 records of any company in a holding company system, or
 12 any affiliate thereof, as the Commission deems to be rel-
 13 evant to costs incurred by a public utility or natural gas
 14 company within such holding company system and nec-
 15 essary or appropriate for the protection of utility customers
 16 with respect to jurisdictional rates.

17 (d) *CONFIDENTIALITY.*—No member, officer, or em-
 18 ployee of the Commission shall divulge any fact or informa-
 19 tion that may come to his or her knowledge during the
 20 course of examination of books, accounts, memoranda, or
 21 other records as provided in this section, except as may be
 22 directed by the Commission or by a court of competent ju-
 23 risdiction.

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

2 (a) *IN GENERAL.*—Upon the written request of a State
3 commission having jurisdiction to regulate a public utility
4 company in a holding company system, the holding com-
5 pany or any associate company or affiliate thereof, other
6 than such public utility company, wherever located, shall
7 produce for inspection books, accounts, memoranda, and
8 other records that—

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

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

13 (3) are necessary for the effective discharge of the
14 responsibilities of the State commission with respect
15 to such proceeding.

16 (b) *LIMITATION.*—Subsection (a) does not apply to
17 any person that is a holding company solely by reason of
18 ownership of one or more qualifying facilities under the
19 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
20 2601 et seq.).

21 (c) *CONFIDENTIALITY OF INFORMATION.*—The produc-
22 tion of books, accounts, memoranda, and other records
23 under subsection (a) shall be subject to such terms and con-
24 ditions as may be necessary and appropriate to safeguard
25 against unwarranted disclosure to the public of any trade
26 secrets or sensitive commercial information.

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

7 (e) *COURT JURISDICTION.*—*Any United States district*
 8 *court located in the State in which the State commission*
 9 *referred to in subsection (a) is located shall have jurisdic-*
 10 *tion to enforce compliance with this section.*

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

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

17 (1) *qualifying facilities under the Public Utility*
 18 *Regulatory Policies Act of 1978 (16 U.S.C. 2601 et*
 19 *seq.);*

20 (2) *exempt wholesale generators; or*

21 (3) *foreign utility companies.*

22 (b) *OTHER AUTHORITY.*—*The Commission shall ex-*
 23 *empt a person or transaction from the requirements of sec-*
 24 *tion 5, if, upon application or upon the motion of the*
 25 *Commission—*

1 (1) *the Commission finds that the books, records,*
 2 *accounts, memoranda, and other records of any per-*
 3 *son are not relevant to the jurisdictional rates of a*
 4 *public utility or natural gas company; or*

5 (2) *the Commission finds that any class of trans-*
 6 *actions is not relevant to the jurisdictional rates of a*
 7 *public utility or natural gas company.*

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

9 (a) *COMMISSION AUTHORITY UNAFFECTED.*—*Nothing*
 10 *in this Act shall limit the authority of the Commission*
 11 *under the Federal Power Act (16 U.S.C. 791a et seq.) to*
 12 *require that jurisdictional rates are just and reasonable, in-*
 13 *cluding the ability to deny or approve the pass through of*
 14 *costs, the prevention of cross-subsidization, and the promul-*
 15 *gation of such rules and regulations as are necessary or ap-*
 16 *propriate for the protection of utility consumers.*

17 (b) *RECOVERY OF COSTS.*—*Nothing in this Act shall*
 18 *preclude the Commission or a State commission from exer-*
 19 *cising its jurisdiction under otherwise applicable law to de-*
 20 *termine whether a public utility company, public utility,*
 21 *or natural gas company may recover in rates any costs of*
 22 *an activity performed by an associate company, or any*
 23 *costs of goods or services acquired by such public utility*
 24 *company from an associate company.*

1 **SEC. 9. APPLICABILITY.**

2 *Except as otherwise specifically provided in this Act,*
 3 *no provision of this Act shall apply to, or be deemed to*
 4 *include—*

5 *(1) the United States;*

6 *(2) a State or any political subdivision of a*
 7 *State;*

8 *(3) any foreign governmental authority not oper-*
 9 *ating in the United States;*

10 *(4) any agency, authority, or instrumentality of*
 11 *any entity referred to in paragraph (1), (2), or (3);*
 12 *or*

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

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

17 *Nothing in this Act precludes the Commission or a*
 18 *State commission from exercising its jurisdiction under oth-*
 19 *erwise applicable law to protect utility customers.*

20 **SEC. 11. ENFORCEMENT.**

21 *The Commission shall have the same powers as set*
 22 *forth in sections 306 through 317 of the Federal Power Act*
 23 *(16 U.S.C. 825e–825p) to enforce the provisions of this Act.*

24 **SEC. 12. SAVINGS PROVISIONS.**

25 *(a) IN GENERAL.—Nothing in this Act prohibits a per-*
 26 *son from engaging in or continuing to engage in activities*

1 *or transactions in which it is legally engaged or authorized*
 2 *to engage on the effective date of this Act.*

3 (b) *EFFECT ON OTHER COMMISSION AUTHORITY.—*

4 *Nothing in this Act limits the authority of the Commission*
 5 *under the Federal Power Act (16 U.S.C. 791a et seq.) (in-*
 6 *cluding section 301 of that Act) or the Natural Gas Act*
 7 *(15 U.S.C. 717 et seq.) (including section 8 of that Act).*

8 **SEC. 13. IMPLEMENTATION.**

9 *Not later than 18 months after the date of enactment*
 10 *of this Act, the Commission shall—*

11 (1) *promulgate such regulations as may be nec-*
 12 *essary or appropriate to implement this Act (other*
 13 *than section 6); and*

14 (2) *submit to the Congress detailed recommenda-*
 15 *tions on technical and conforming amendments to*
 16 *Federal law necessary to carry out this Act and the*
 17 *amendments made by this Act.*

18 **SEC. 14. TRANSFER OF RESOURCES.**

19 *All books and records that relate primarily to the func-*
 20 *tions transferred to the Commission under this Act shall*
 21 *be transferred from the Securities and Exchange Commis-*
 22 *sion to the Commission.*

1 **SEC. 15. INTER-AGENCY REVIEW OF COMPETITION IN THE**
 2 **WHOLESALE AND RETAIL MARKETS FOR**
 3 **ELECTRIC ENERGY.**

4 (a) *TASK FORCE.*—*There is established an inter-agen-*
 5 *cy task force, to be known as the “Electric Energy Market*
 6 *Competition Task Force” (referred to in this section as the*
 7 *“task force”), which shall consist of—*

8 (1) *1 member each from—*

9 (A) *the Department of Justice, to be ap-*
 10 *pointed by the Attorney General of the United*
 11 *States;*

12 (B) *the Federal Energy Regulatory Com-*
 13 *mission, to be appointed by the chairman of that*
 14 *Commission; and*

15 (C) *the Federal Trade Commission, to be*
 16 *appointed by the chairman of that Commission;*
 17 *and*

18 (2) *2 advisory members (who shall not vote), of*
 19 *whom—*

20 (A) *1 shall be appointed by the Secretary of*
 21 *Agriculture to represent the Rural Utility Serv-*
 22 *ice; and*

23 (B) *1 shall be appointed by the Chairman*
 24 *of the Securities and Exchange Commission to*
 25 *represent that Commission.*

26 (b) *STUDY AND REPORT.*—

1 (1) *STUDY.*—*The task force shall perform a*
 2 *study and analysis of the protection and promotion*
 3 *of competition within the wholesale and retail market*
 4 *for electric energy in the United States.*

5 (2) *REPORT.*—

6 (A) *FINAL REPORT.*—*Not later than 1 year*
 7 *after the effective date of this Act, the task force*
 8 *shall submit a final report of its findings under*
 9 *paragraph (1) to the Congress.*

10 (B) *PUBLIC COMMENT.*—*At least 60 days*
 11 *before submission of a final report to the Con-*
 12 *gress under subparagraph (A), the task force*
 13 *shall publish a draft report in the Federal Reg-*
 14 *ister to provide for public comment.*

15 (c) *FOCUS.*—*The study required by this section shall*
 16 *examine—*

17 (1) *the best means of protecting competition*
 18 *within the wholesale and retail electric market;*

19 (2) *activities within the wholesale and retail*
 20 *electric market that may allow unfair and unjustified*
 21 *discriminatory and deceptive practices;*

22 (3) *activities within the wholesale and retail*
 23 *electric market, including mergers and acquisitions,*
 24 *that deny market access or suppress competition;*

1 (4) *cross-subsidization that may occur between*
 2 *regulated and nonregulated activities; and*

3 (5) *the role of State public utility commissions*
 4 *in regulating competition in the wholesale and retail*
 5 *electric market.*

6 (d) *CONSULTATION.*—*In performing the study required*
 7 *by this section, the task force shall consult with and solicit*
 8 *comments from its advisory members, the States, represent-*
 9 *atives of the electric power industry, and the public.*

10 **SEC. 16. GAO STUDY ON IMPLEMENTATION.**

11 (a) *STUDY.*—*The Comptroller General shall conduct a*
 12 *study of the success of the Federal Government and the*
 13 *States during the 18-month period following the effective*
 14 *date of this Act in—*

15 (1) *the prevention of anticompetitive practices*
 16 *and other abuses by public utility holding companies,*
 17 *including cross-subsidization and other market power*
 18 *abuses; and*

19 (2) *the promotion of competition and efficient*
 20 *energy markets to the benefit of consumers.*

21 (b) *REPORT TO CONGRESS.*—*Not earlier than 18*
 22 *months after the effective date of this Act or later than 24*
 23 *months after that effective date, the Comptroller General*
 24 *shall submit a report to the Congress on the results of the*
 25 *study conducted under subsection (a), including probable*

1 *causes of its findings and recommendations to the Congress*
2 *and the States for any necessary legislative changes.*

3 **SEC. 17. EFFECTIVE DATE.**

4 *This Act shall take effect 18 months after the date of*
5 *enactment of this Act.*

6 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

7 *There are authorized to be appropriated such funds as*
8 *may be necessary to carry out this Act.*

9 **SEC. 19. CONFORMING AMENDMENT TO THE FEDERAL**
10 **POWER ACT.**

11 *Section 318 of the Federal Power Act (16 U.S.C. 825q)*
12 *is repealed.*

Calendar No. 36

107TH CONGRESS
1ST SESSION

S. 206

[Report No. 107–15]

A BILL

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 2001, and for other purposes.

MAY 9, 2001

Reported with an amendment