

107TH CONGRESS  
1ST SESSION

# S. 206

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

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## 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, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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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 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

7 (a) FINDINGS.—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 State regula-  
9 tion in order to ensure the rate protection of utility  
10 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 (15  
7 U.S.C. 79z-5a, 79z-5b), as those sections existed on  
8 the day before the effective 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. 79 et seq.) is repealed.

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

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

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

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

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

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

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

20 (c) CONFIDENTIALITY OF INFORMATION.—The pro-  
21 duction of books, accounts, memoranda, and other records  
22 under subsection (a) shall be subject to such terms and  
23 conditions as may be necessary and appropriate to safe-  
24 guard against unwarranted disclosure to the public of any  
25 trade secrets or sensitive commercial information.

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

7 (e) 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 effective date of this Act, the Commission shall promul-  
14 gate a final rule to exempt from the requirements of sec-  
15 tion 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.—The Commission shall ex-  
22 empt a person or transaction from the requirements of  
23 section 5, if, upon application or upon the motion of the  
24 Commission—

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

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

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

9           Nothing in this Act shall preclude the Commission  
10 or a State commission from exercising its jurisdiction  
11 under otherwise applicable law to determine whether a  
12 public utility company, public utility, or natural gas com-  
13 pany may recover in rates any costs of an activity per-  
14 formed by an associate company, or any costs of goods  
15 or services acquired by such public utility company from  
16 an associate company.

17 **SEC. 9. APPLICABILITY.**

18           No provision of this Act shall apply to, or be deemed  
19 to include—

20           (1) the United States;

21           (2) a State or any political subdivision of a  
22 State;

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

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

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

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

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

11 **SEC. 11. ENFORCEMENT.**

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

16 **SEC. 12. SAVINGS PROVISIONS.**

17          (a) **IN GENERAL.**—Nothing in this Act prohibits a  
18          person from engaging in or continuing to engage in activi-  
19          ties or transactions in which it is legally engaged or au-  
20          thorized to engage on the effective date of this Act.

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

1 Act (15 U.S.C. 717 et seq.) (including section 8 of that  
2 Act).

3 **SEC. 13. IMPLEMENTATION.**

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

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

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

13 **SEC. 14. TRANSFER OF RESOURCES.**

14 All books and records that relate primarily to the  
15 functions transferred to the Commission under this Act  
16 shall be transferred from the Securities and Exchange  
17 Commission to the Commission.

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

19 This Act shall take effect 18 months after the date  
20 of enactment of this Act.

21 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL**  
2 **POWER ACT.**

3 Section 318 of the Federal Power Act (16 U.S.C.  
4 825q) is repealed.

