

Resolution on Legislation to Change the Public Utility Holding Company Act of 1935

WHEREAS, In 1935, Congress determined that multi-State holding companies were beyond effective regulatory control of State regulatory commissions, causing harm to utility investors and consumers, and accordingly, enacted the Public Utility Holding Company Act of 1935 (PUHCA or the Act), imposing a localized, vertically integrated structure on the electric utility industry, and establishing a system of regulation administered by the Securities and Exchange Commission (SEC) to combat the abusive practices of utility holding companies; *and*

WHEREAS, Under the Act, holding companies with significant interstate utility operations must "register" and comply with certain regulatory requirements and prohibitions, including the following: prior SEC approval before an action can be taken (e.g., certain securities issuances and utility acquisitions), SEC monitoring and auditing of actions (e.g., certain transactions between holding company affiliates), or flat prohibitions on actions (e.g., certain acquisitions, such as the acquisition of distant retail companies, diversifications into unrelated businesses and certain inter-affiliate transactions); *and*

WHEREAS, The Act imposes restrictions concerning the acquisition of retail utility companies that affect all possible acquires, including non-utility corporations; *and*

WHEREAS, Since 1935, Congress has enacted legislation to loosen some of these restrictions and prohibitions through various exemptions from the Act, but has rejected calls for outright repeal of the statute; *and*

WHEREAS, Currently, legislation to repeal the Act will soon be introduced, based on the stated grounds that the statute is no longer necessary due to growing competition in utility markets and improvements in the regulation of utility operations by State commissions and the Federal Energy Regulatory Commission; *and*

WHEREAS, The SEC is conducting an investigation of the implications of repeal or substantial modification of the Act, including an examination of the authority and resources of the States to protect consumers if Federal regulation under the statute is reduced or abolished; *now, therefore, be it*

RESOLVED, By the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1995 Winter Meeting in Washington, D.C., that any legislation to change PUHCA should be consistent with the following principles:

1. Congress should not hold hearings on any PUHCA legislation until the SEC has completed its investigation and released its findings, including the results of its survey of the States.

2. The type and degree of federal legislation and regulation should be based on the need for such legislation and regulation. There should not be arbitrary distinctions based on corporate structure.
3. PUHCA legislation should ensure that the authority of the States to regulate utility holding companies is not preempted or restricted, including State authority to review prospectively requests for diversification, if a State so chooses, and to require that holding companies place non-utility businesses in separate subsidiaries, to regulate all interaffiliate transactions, and to require divestiture of utility businesses.
4. Any removal of the Act's provisions relating to diversification, interaffiliate transactions, securities issuances, mergers and acquisitions, and corporate form and structure should not take effect until each State has had the opportunity to fill any regulatory gaps in State laws, and secure adequate regulatory resources to perform these functions. Accordingly, there should be a meaningful transition period before new Federal legislation takes effect.
5. Because access to the books and records of holding companies and their subsidiaries is necessary to protect consumers, any PUHCA legislation should unequivocally establish a State right of access to all such books and records, wherever located. In addition, the SEC, the FERC, or another Federal agency should compile and maintain a publicly accessible data base providing current information on holding company diversification activities to assist State regulation of interaffiliate transactions.
6. Those elements of PUHCA that are redundant at the federal level should be repealed.

Sponsored by the Committee on Electricity
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