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ACCESS TO BOOKS AND RECORDS OF UTILITY OWNERS IF PUHCA IS REPEALED: 9 REASONS WHY IT'S A JOKE

1. FERC is only given authority to order utility holding companies or their subsidiaries to *maintain* records that both (1) relate to utility costs, **AND** (2) are necessary for FERC's jurisdictional rates. Since FERC no longer uses cost-based ratemaking for wholesale sales, that means that *no* records could be required to be maintained for wholesale electricity rates in most cases.

2. Even when FERC might require records to be kept regarding transmission or other rates, FERC is given authority to provide broad exemptions.

3. State utility commissions are given no authority at all to require either utility holding companies or their subsidiaries to maintain *any* records.

4. Since FERC can only require records relating to its own "jurisdictional" rates, FERC also lacks authority to require holding companies or their affiliates to maintain any records related to state ratemaking for generation or distribution.

5. As we have all learned from the recent Supreme Court case regarding Arthur Anderson and Enron, if a company is not required to maintain records, it will shred them fast and with no legal consequences. PUHCA, on the other hand, in Section 15, requires that: "Every registered holding company and every subsidiary company thereof shall *make, keep, and preserve for such periods*, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest OR for the protection of investors OR consumers OR for the enforcement of the provisions of this title OR the rules, regulations, OR orders thereunder."

6. The new "books and records" provision to "replace" PUHCA allows States to request a look at any records that a utility holding company or its affiliates may have chosen to maintain, but the burden of proof appears to be on the States to describe such records "in reasonable detail" and to prove that such records affect state ratemaking. Without knowing what such records may be, this would be virtually impossible.

7. The States must prove the relevance of such books to rates in a proceeding at the State commission. Since typically no proceeding is held unless there are disputed facts, and the

disputed facts can probably only be found in the books and records, this is most likely a self-defeating process.

8. The utility holding companies that State commissions and FERC will be dealing with will include Berkshire Hathaway, which has argued even to the Securities and Exchange Commission that its records are confidential. State commissions with their tiny staffs, will have no chance at all to get at meaningful records of huge companies such as Berkshire, ChevronTexaco, AIG, Morgan Stanley, CitiCorp, Exelon/PSEG, E.ON, Electricite de France, etc. (An earlier version at least required records to be provided in English, but that was apparently too burdensome for the holding companies.)

9. Even if FERC and State commissions could get to see these books and records, they are to be kept confidential and secret. In other words, the public and potential interveners representing the public will have no ability at all to see such books and records as may exist. So much for transparency and openness in government.

In short, claiming that FERC and States will have "access" to a utility owner's and affiliates' books and records is, to be polite, a vast overstatement that should not fool the public into thinking that their consumer and investor protections from utility holding companies are not being totally abolished, as they are, with PUHCA repeal.