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Joan Claybrook, President

ANALYSIS OF HARMFUL PROVISIONS IN THE ELECTRICITY TITLE OF SENATE ENERGY BILL

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Subtitle B, Section 1221: Siting of Interstate Electric Transmission Facilities

Overturns nearly a century of local control over the siting of electric transmission lines. It authorizes the Federal Energy Regulatory Commission (FERC) to overrule local and state governments in the siting of transmission lines and allows such projects to acquire rights-of-way through eminent domain. The section also authorizes the FERC to issue a permit for a facility if a state takes longer than one year to review the application, or if a state places certain conditions on the permit for approval.

Subtitle D, Section 1241: Transmission Rate Reform

Allows a monopoly industry—transmission line owners—to charge consumers more by replacing cost-of-service ratemaking with incentive-based rate making. But cash “incentives” are meaningless in an inherently monopolistic industry like transmission. Rather than improve reliability (as is its stated purpose), this incentive-based ratemaking will simply act as a tax increase on consumers—with consumers receiving no guarantee that the higher rates they will be paying will lead to better service. This rate increase on consumers will be charged not only by builders of new transmission lines, but owners of existing lines will be able to now pass on higher rates for routine maintenance and operation costs. The August 2003 blackout was caused not by inadequate transmission line capacity but by poor management of power across plentiful lines—a problem associated with deregulation. This section ignores the recent experience of the telecom industry, which went on a billion-dollar building spree of cable lines following the deregulatory Telecommunications Act of 1996. But the building spree in the inherently monopolistic lines sector resulted in massive over-capacity, which directly led to the crash of many telecommunications companies.

Subtitle D, Section 1242: Participant Funding

Promotes so-called “participant funding,” by which owners of power plants will be responsible for the costs associated with hooking their power plant up to the grid. The alternative plan, rejected by the Senate, would “socialize” all costs associated with hooking plants up to the grid among all market participants. Participant funding benefits vertically integrated companies, including Southern Company and Entergy, that have a monopoly in a region forcing any potential generation supply competitor to not only cover its own costs but also contribute to the costs of the entire grid.

Subtitle F: Market Transparency, Enforcement, and Consumer Protection; Section 1261: Market Transparency Rules

This section only directs the FERC to establish an “electronic information system” to collect a very limited amount of information on electricity trading. FERC already was collecting this information when Enron, Reliant Energy, and other companies stole billions of dollars from West Coast consumers in the energy crisis of 2001. Simply collecting information doesn’t stop market manipulation—only re-regulating energy markets and establishing cost-of-service rates will adequately protect consumers. The fact that the FERC is still unable to sort out the extent of company market manipulation five years after the West Coast energy crisis is proof that market-based electricity rates are far too complex for regulators to effectively monitor.

Subtitle F, Sections 1262 and 1263

These sections prohibit the filing of false information and round trip trading—neither of which would have done anything to stop what Enron and other energy companies did to contribute to the West Coast energy crisis. The only way for regulators to effectively protect consumers is to end the failed deregulation experiment and re-establish cost-of-service rates.

Subtitle H—Repeal of PUHCA and Merger Reform

The 70-year-old consumer and investor protection statute would be completely abolished within 6 months, opening up ownership of approximately \$1 trillion worth of electric generation, transmission and distribution assets and natural gas distribution assets to any kind of company, anywhere, for the first time since 1935. At that time, hundreds of Enron-type affiliate and other abuses took place between holding companies and their utility subsidiaries resulting in the collapse of the holding company empires, which wiped out tens of thousands of investors.

In PUHCA’s place, FERC would be given a virtually meaningless right to look at the “books and records” of conglomerates the size of GE, ExxonMobil, J.P. Morgan and Berkshire Hathaway, in the off-chance that FERC could discover whether these vast conglomerates have affiliates whose activities have in any way affected their affiliated utility’s rates. State review of such huge companies, the adequacy of which review would clearly be absurd in any case, would have even more restricted rights to look at these affiliated books and records. In addition, the Senate bill would give certain additional merger authority to FERC over generating plants and holding companies. However, without the structural merger standards of PUHCA, which limit the size and geographic scope of utility mergers in order to protect local management and effective regulation, FERC will presumably continue to approve all the utility mergers that it reviews.

The only rates state utility commissions will have any control over at all will be distribution facility costs; the rest will be determined by FERC, which has abrogated its rate review to “the market.” However, with PUHCA repealed, interstate holding companies will also be free to buy up and consolidate distribution companies. Analysts agree that there will be “substantial consolidation” in the utility industry once PUHCA is repealed, which will effectively eliminate local control and accountability, plus any adequate regulation of rates.

The repeal of PUHCA means we will have again the huge “power trusts,” only this time owning *unregulated* utility monopolies, thanks to FERC’s wholesale electricity deregulation, and the fact that Congress is rendering meaningless any effective state utility regulation by removing via PUHCA repeal all limits on the creation of gigantic, multi-state utility holding company conglomerates.