Blueskies Alliance (Dallas, TX) • California Office of Public Citizen • Citizen Action Illinois • Citizen Power (Pittsburgh, PA) • Citizen Works (Washington, DC) • Citizens Action Coalition of Indiana • Citizens' Utility Board of Oregon • Citizens' Utility Board of Wisconsin • Colorado Progressive Coalition • Consumer Federation of America (Washington, DC) • Consumers Union (Washington, DC) • Consumers Union (Austin, TX) • CorpWatch (Oakland, CA) • Dakota Resource Council (North Dakota) • Earth Action Network (Los Angeles, CA) • Essential Action (Washington, DC) • Florida Public Interest Research Group • Foundation for Taxpayer and Consumer Rights (Santa Monica, CA) • Friends of the Earth (Washington, DC) • Global Exchange (San Francisco, CA) • GRACE Public Fund (New York, NY) • Institute for Local Self-Reliance (Minneapolis, MN) • Local Power (Oakland, CA) • Michigan Consumer Federation • Michigan Environmental Council • Minnesotans for an Energy-Efficient Economy • Mississippi 2020 Network • National Consumer Law Center (Boston, MA) • North Carolina Justice & Community Development Center • Ohio Partners for Affordable Energy • Organic Consumers Association (Minnesota) • Public Citizen (Washington, DC) • Public Utility Law Project (Albany, NY) • South Carolina Progressive Network • Southwest Energy Efficiency Project (Boulder, CO) • Sustainable Energy and Economic Development Coalition (Austin, TX) • Sustainable Energy & Economy Network (Washington, DC) • Texas Legal Services Center • Texas Public Citizen • Union of Concerned Scientists • United Electrical Workers Union • U.S. Public Interest Research Group (Washington, DC) • Utah Legislative Watch • The Utility Reform Network (San Francisco, CA) • Utility Workers Union of America • Virginia Citizens Consumer Council • West Virginia Citizen Action Group

State Leaders Urge Congress to Save PUHCA

As Congress continues debate on the energy bill, the issue that has eclipsed all others is the proposal to open the Alaskan Arctic National Wildlife Refuge to oil drilling. But under the media's radar is the move to repeal the federal government's most successful and important energy consumer and investor protection, the Public Utility Holding Company Act (PUHCA). Out of concern of the threat PUHCA repeal has for the ability of states to protect consumers, the above 45 organizations strongly urge that Congress preserve PUHCA.

Passed in 1935, PUHCA was decades ahead of its time, but is needed now more than ever. Congressional backers of the Act acknowledge that electric utilities, due to the industry's unique economic characteristics and the important public interest and national security role electricity serves, require a distinctive set of rules. Prior to the law's enactment, states were left powerless by sprawling, multi-state utility holding companies. Their opaque financial statements and Enron-style abuses, milked the revenues from the utility affiliates while shifting costs to the utility from unregulated activities, jacking up electric rates for consumers and temporarily inflating stock value for investors. The utilities protected their market dominance by lavishing campaign money on politicians and enveloping Congress with lobbyists. But, just as with Enron, the large utility holding companies soon collapsed under their own inflated weight: 53 utility holding companies went bankrupt from 1929 to 1936 after the banks called in their loans.

That's where PUHCA stepped in. In 1935, the Act established one of the first lobbyist disclosure laws, forcing utilities to list, by name, all of their lobbyists (60 years before the federal Lobbying Disclosure Act). PUHCA also set up one of the earliest federal campaign finance laws, forbidding PUHCA-regulated utilities (and their top executives) from donating money to federal political campaigns (40 years before Watergate prompted similar standards for the rest of American industry). The Act limited utilities

to investing ratepayers' money in utility-related businesses (and not telecommunications, weather derivatives, home security businesses and other recently-exempt-from-PUHCA boondoggles that sank the likes of Enron, Westar Energy and Montana Power).

Importantly, the Act also kept the electric industry localized and unconcentrated, making PUHCA a states' rights law. PUHCA requires a utility parent to either (1) incorporate in the same state as the utility, so that state regulators can control its utility ownership, or (2) register with the U.S. Securities and Exchange Commission (SEC) and be comprehensively regulated under PUHCA, because state utility regulators cannot effectively control utility operations of multi-state parent companies.

What was the result of PUHCA's strong protections? For more than 50 years, the United States' electrical system was the envy of the industrialized world for its reliable and affordable service, and our utilities were the model of stability and profitability. When utilities made mistakes, the impact tended to be localized, and state regulators could be held accountable by the state's politicians and voters.

Partial PUHCA repeals in 1992 and 1996, loosening of administrative regulations and generous interpretations by the SEC opened the door to abuse, but PUHCA still remains a bulwark against creation of unaccountable multi-state utility holding companies, and probably is what prevented Enron from owning more than one local electric utility, Portland General.

And now major investors like Warren Buffet and huge energy conglomerates like ExxonMobil want the law repealed because PUHCA does not allow them to own and control utilities unless they give up their other businesses. This requirement has kept the utility industry among the least concentrated and ensured that PUHCA-regulated companies are among the most stable, evidenced by the fact that those utilities regulated by PUHCA have stronger credit ratings.

So PUHCA protects the financial health of public utilities that supply our electricity and retail natural gas by controlling their parent companies. Of course, PUHCA was also designed to reduce over-concentration of economic power in just a few companies. The top five oil companies now control 50 percent of U.S. oil production. If they also controlled public utilities, they would be too powerful for any government to regulate.

Proponents of PUHCA repeal claim that replacing the Act with granting federal and state regulators access to the companies' "books and records" is adequate. But it is clearly impossible for a state (or even federal) utility commission, with its limited staff, to review, much less understand and control, the books and records of a huge conglomerate like ChevronTexaco or ExxonMobil (Enron's books and records are a recent example of what a fruitless job that can be). And under utility deregulation, energy companies are demanding more and more confidentiality as they claim to be competitive and want to protect their "trade secrets" as they deny states and the public access to crucial financial information.

Congress is preparing to completely scrap the most forward thinking utility law the United States has ever known. This comes at a time when the promises of electric deregulation—low prices and reliable service—have failed in California, Montana, New York, Pennsylvania and other states. These debacles, combined with the financial collapse of dozens of electricity companies and the August 2003 Midwest and Northeast power blackout have made America's energy system no longer the model to follow. But as bad as conditions have been, without PUHCA things would have been far worse. The 45 organizations signing on to this letter urge Congress to reject the energy bill because PUHCA not only needs to be saved, but it needs to be strengthened and enforced.