PUHCA Still Working to Protect Consumers; National and State Leaders Once Again Urge Congress to Save PUHCA

June 9, 2005

Dear Senator,

As the Senate Energy and Natural Resources Committee begins its debate on its third energy bill in four years, the federal government's most successful and important energy consumer and investor protection, the Public Utility Holding Company Act (PUHCA), is slated for repeal. The repeal of PUHCA is one of the most harmful – yet one of the least-discussed – provisions in the House energy bill. Out of concern of the threat PUHCA repeal has for consumers and states' ability to protect consumers, the 75 organizations listed below strongly urge that Congress preserve PUHCA.

Passed in 1935, PUHCA was decades ahead of its time, but is needed now more than ever. 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. 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 limited utilities to investing ratepayers' money in utility-related businesses (recent PUHCA exemptions have sunk the likes of Enron, Westar Energy, and Montana Power). 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).

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 has been 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. And despite partial PUHCA repeals in 1992 and 1996, as well as lax enforcement by the SEC, PUHCA continues to protect utility consumers in 2005.

Now major investors like Warren Buffet and investment banks like Goldman Sachs want the law repealed – claiming that it is an "outdated, Depression era" law that hinders investment in the electricity sector and transmission. But exactly the opposite is true: PUHCA regulation promotes investment in utilities, because the credit ratings of PUHCA-regulated holding companies are better than those of unregulated companies, as *Standard & Poor's* and *Fitch* concluded in reports issued in 2004. According to the *Standard & Poor's* report:

> "The main argument to repeal PUHCA—that it inhibits investment in the industry—does not seem to hold much water after the power generation market imploded. With most regions experiencing 30% reserve margins and industry reports indicating that new generation will not be needed for 10 years, the need for capital to build power plants in many regions is no longer a driver in PUHCA's repeal. Yet, the U.S. transmission infrastructure is in need of significant capital, with estimates of up to $56 billion over the next 10 years. However, investor appetite for the debt and equity of companies with stable regulated revenues has not waned. So, repealing PUHCA on the basis of needing more capital in the industry does not seem to be a valid point, given the industry's foreseeable ability to raise capital for transmission and distribution projects."

Zero PUHCA-regulated electric utility holding companies have ever declared bankruptcy. In fact, Harbert Distressed Investment Master Fund, Ltd. has recently filed a complaint asking the SEC to stop granting waivers of PUHCA provisions and instead protect its investment in Allegheny Energy Inc., a PUHCA-regulated utility holding company.

PUHCA is 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. Furthermore, the Federal Energy Regulatory Commission (FERC) is deregulating wholesale electric rates on the theory that there will be increasing competition among electric suppliers. This can hardly be the case if a handful of electric and natural gas holding companies can control the vast majority of the utilities in the United States.

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 huge conglomerates like AIG, Goldman Sachs or ExxonMobil (Enron's books and records are a recent example of what an overwhelming 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.

The House 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 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, and will be, far worse. The 75 organizations signing on to this letter urge the Senate to take the lead to not only to protect PUHCA from repeal, but to strengthen and enforce this vital consumer protection statute.

Sincerely,

Public Citizen
United Electrical Workers (UE)
Center for Corporate Policy
Sierra Club
CorpWatch
Earth Action Network
Cheaper, Safer Power

The Utility Reform Network (TURN)
Public Utility Law Project
Citizen Power
Energy Justice
Progressive Leadership Alliance of Nevada
Virginia Citizens Consumer Council
West Virginia Citizen Action

RENEW Wisconsin
IBEW Wisconsin
Blue Skies Alliance
Citizen Action Illinois
CUB Oregon
Dakota Resource Council
Illinois Citizen Action
Iowa Citizen Action Network
Institute for Local Self-Reliance
Mississippi 2020 Network
Montana Environmental Info Center
Alliance for Affordable Energy
Foundation for Taxpayer & Consumer Rights
Connecticut Citizen Action
Green Delaware
Georgia Rural Urban Summit
Michigan Consumer Federation
Minnesotans for an Energy-Efficient Economy
Northwest Energy Coalition
National Consumer Law Center
New Jersey Citizen Action
Renewable Energy Long Island
Citizen's Campaign for the Environment
Friends of the Bay
North Carolina Justice Center
South Carolina Progressive Network
Ohio Partners for Affordable Energy
Consumers Union Texas
TX Legal Services Center
Powder River Basin Resource Council

U.S. Public Interest Research Group (PIRG)
Arizona PIRG
CALPIRG
Environment California
CoPIRG
Environment Colorado
ConnPIRG
Florida PIRG
Georgia PIRG
Iowa PIRG
Illinois PIRG
INPIRG
MaryPIRG
MASSPIRG
PIRGIM
MoPIRG
MontPIRG
NHPIRG
NJPIRG Citizen Lobby
NMPIRG
NYPIRG
NCPIRG
Ohio PIRG
Oregon State PIRG
PennPIRG
PennEnvironment
RIPIRG
TexPIRG
VPIRG
WashPIRG
WISPIRG