

AMENDMENT NO. _____ Calendar No. _____

Purpose: To repeal PUHCA and provide for merger reform.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. _____

To enhance the energy security of the United States, and
for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by
_____ to Title XII—Electricity
(END05371.LC)

Viz:

1 On page 87, between lines 2 and 3, insert the fol-
2 lowing:

3 **Subtitle G—Repeal of PUHCA and**
4 **Merger Reform**

5 **SEC. 1281. SHORT TITLE.**

6 This subtitle may be cited as the “Public Utility
7 Holding Company Act of 2005”.

8 **SEC. 1282. DEFINITIONS.**

9 For purposes of this subtitle:

1 (1) AFFILIATE.—The term “affiliate” of a com-
2 pany means any company, 5 percent or more of the
3 outstanding voting securities of which are owned,
4 controlled, or held with power to vote, directly or in-
5 directly, by such company.

6 (2) ASSOCIATE COMPANY.—The term “associate
7 company” of a company means any company in the
8 same holding company system with such company.

9 (3) COMMISSION.—The term “Commission”
10 means the Federal Energy Regulatory Commission.

11 (4) COMPANY.—The term “company” means a
12 corporation, partnership, association, joint stock
13 company, business trust, or any organized group of
14 persons, whether incorporated or not, or a receiver,
15 trustee, or other liquidating agent of any of the fore-
16 going.

17 (5) ELECTRIC UTILITY COMPANY.—The term
18 “electric utility company” means any company that
19 owns or operates facilities used for the generation,
20 transmission, or distribution of electric energy for
21 sale.

22 (6) EXEMPT WHOLESALE GENERATOR AND
23 FOREIGN UTILITY COMPANY.—The terms “exempt
24 wholesale generator” and “foreign utility company”
25 have the same meanings as in sections 32 and 33,

1 respectively, of the Public Utility Holding Company
2 Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those
3 sections existed on the day before the effective date
4 of this subtitle.

5 (7) GAS UTILITY COMPANY.—The term “gas
6 utility company” means any company that owns or
7 operates facilities used for distribution at retail
8 (other than the distribution only in enclosed portable
9 containers or distribution to tenants or employees of
10 the company operating such facilities for their own
11 use and not for resale) of natural or manufactured
12 gas for heat, light, or power.

13 (8) HOLDING COMPANY.—The term “holding
14 company” means—

15 (A) any company that directly or indirectly
16 owns, controls, or holds, with power to vote, 10
17 percent or more of the outstanding voting secu-
18 rities of a public-utility company or of a holding
19 company of any public-utility company; and

20 (B) any person, determined by the Com-
21 mission, after notice and opportunity for hear-
22 ing, to exercise directly or indirectly (either
23 alone or pursuant to an arrangement or under-
24 standing with 1 or more persons) such a con-
25 trolling influence over the management or poli-

1 cies of any public-utility company or holding
2 company as to make it necessary or appropriate
3 for the rate protection of utility customers with
4 respect to rates that such person be subject to
5 the obligations, duties, and liabilities imposed
6 by this subtitle upon holding companies.

7 (9) HOLDING COMPANY SYSTEM.—The term
8 “holding company system” means a holding com-
9 pany, together with its subsidiary companies.

10 (10) JURISDICTIONAL RATES.—The term “ju-
11 risdictional rates” means rates accepted or estab-
12 lished by the Commission for the transmission of
13 electric energy in interstate commerce, the sale of
14 electric energy at wholesale in interstate commerce,
15 the transportation of natural gas in interstate com-
16 merce, and the sale in interstate commerce of nat-
17 ural gas for resale for ultimate public consumption
18 for domestic, commercial, industrial, or any other
19 use.

20 (11) NATURAL GAS COMPANY.—The term “nat-
21 ural gas company” means a person engaged in the
22 transportation of natural gas in interstate commerce
23 or the sale of such gas in interstate commerce for
24 resale.

1 (12) PERSON.—The term “person” means an
2 individual or company.

3 (13) PUBLIC UTILITY.—The term “public util-
4 ity” means any person who owns or operates facili-
5 ties used for transmission of electric energy in inter-
6 state commerce or sales of electric energy at whole-
7 sale in interstate commerce.

8 (14) PUBLIC-UTILITY COMPANY.—The term
9 “public-utility company” means an electric utility
10 company or a gas utility company.

11 (15) STATE COMMISSION.—The term “State
12 commission” means any commission, board, agency,
13 or officer, by whatever name designated, of a State,
14 municipality, or other political subdivision of a State
15 that, under the laws of such State, has jurisdiction
16 to regulate public utility companies.

17 (16) SUBSIDIARY COMPANY.—The term “sub-
18 sidiary company” of a holding company means—

19 (A) any company, 10 percent or more of
20 the outstanding voting securities of which are
21 directly or indirectly owned, controlled, or held
22 with power to vote, by such holding company;
23 and

24 (B) any person, the management or poli-
25 cies of which the Commission, after notice and

1 opportunity for hearing, determines to be sub-
2 ject to a controlling influence, directly or indi-
3 rectly, by such holding company (either alone or
4 pursuant to an arrangement or understanding
5 with 1 or more other persons) so as to make it
6 necessary for the rate protection of utility cus-
7 tomers with respect to rates that such person
8 be subject to the obligations, duties, and liabil-
9 ities imposed by this subtitle upon subsidiary
10 companies of holding companies.

11 (17) VOTING SECURITY.—The term “voting se-
12 curity” means any security presently entitling the
13 owner or holder thereof to vote in the direction or
14 management of the affairs of a company.

15 **SEC. 1283. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
16 **PANY ACT OF 1935.**

17 The Public Utility Holding Company Act of 1935 (15
18 U.S.C. 79 et seq.) is repealed.

19 **SEC. 1284. FEDERAL ACCESS TO BOOKS AND RECORDS.**

20 (a) IN GENERAL.—Each holding company and each
21 associate company thereof shall maintain, and shall make
22 available to the Commission, such books, accounts, memo-
23 randa, and other records as the Commission determines
24 are relevant to costs incurred by a public utility or natural
25 gas company that is an associate company of such holding

1 company and necessary or appropriate for the protection
2 of utility customers with respect to jurisdictional rates.

3 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
4 ing company or of any subsidiary company of a holding
5 company shall maintain, and shall make available to the
6 Commission, such books, accounts, memoranda, and other
7 records with respect to any transaction with another affil-
8 iate, as the Commission determines are relevant to costs
9 incurred by a public utility or natural gas company that
10 is an associate company of such holding company and nec-
11 essary or appropriate for the protection of utility cus-
12 tomers with respect to jurisdictional rates.

13 (c) HOLDING COMPANY SYSTEMS.—The Commission
14 may examine the books, accounts, memoranda, and other
15 records of any company in a holding company system, or
16 any affiliate thereof, as the Commission determines are
17 relevant to costs incurred by a public utility or natural
18 gas company within such holding company system and
19 necessary or appropriate for the protection of utility cus-
20 tomers with respect to jurisdictional rates.

21 (d) CONFIDENTIALITY.—No member, officer, or em-
22 ployee of the Commission shall divulge any fact or infor-
23 mation that may come to his or her knowledge during the
24 course of examination of books, accounts, memoranda, or
25 other records as provided in this section, except as may

1 be directed by the Commission or by a court of competent
2 jurisdiction.

3 **SEC. 1285. STATE ACCESS TO BOOKS AND RECORDS.**

4 (a) IN GENERAL.—Upon the written request of a
5 State commission having jurisdiction to regulate a public-
6 utility company in a holding company system, the holding
7 company or any associate company or affiliate thereof,
8 other than such public-utility company, wherever located,
9 shall produce for inspection books, accounts, memoranda,
10 and other records that—

11 (1) have been identified in reasonable detail in
12 a proceeding before the State commission;

13 (2) the State commission determines are rel-
14 evant to costs incurred by such public-utility com-
15 pany; and

16 (3) are necessary for the effective discharge of
17 the responsibilities of the State commission with re-
18 spect to such proceeding.

19 (b) LIMITATION.—Subsection (a) does not apply to
20 any person that is a holding company solely by reason of
21 ownership of 1 or more qualifying facilities under the Pub-
22 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
23 2601 et seq.).

24 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
25 duction of books, accounts, memoranda, and other records

1 under subsection (a) shall be subject to such terms and
2 conditions as may be necessary and appropriate to safe-
3 guard against unwarranted disclosure to the public of any
4 trade secrets or sensitive commercial information.

5 (d) EFFECT ON STATE LAW.—Nothing in this sec-
6 tion shall preempt applicable State law concerning the pro-
7 vision of books, accounts, memoranda, and other records,
8 or in any way limit the rights of any State to obtain books,
9 accounts, memoranda, and other records under any other
10 Federal law, contract, or otherwise.

11 (e) COURT JURISDICTION.—Any United States dis-
12 trict court located in the State in which the State commis-
13 sion referred to in subsection (a) is located shall have ju-
14 risdiction to enforce compliance with this section.

15 **SEC. 1286. EXEMPTION AUTHORITY.**

16 (a) RULEMAKING.—Not later than 90 days after the
17 effective date of this subtitle, the Commission shall issue
18 a final rule to exempt from the requirements of section
19 1284 (relating to Federal access to books and records) any
20 person that is a holding company, solely with respect to
21 1 or more—

22 (1) qualifying facilities under the Public Utility
23 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
24 seq.);

25 (2) exempt wholesale generators; or

1 (3) foreign utility companies.

2 (b) OTHER AUTHORITY.—The Commission shall ex-
3 empt a person or transaction from the requirements of
4 section 1284 (relating to Federal access to books and
5 records) if, upon application or upon the motion of the
6 Commission—

7 (1) the Commission finds that the books, ac-
8 counts, memoranda, and other records of any person
9 are not relevant to the jurisdictional rates of a pub-
10 lic utility or natural gas company; or

11 (2) the Commission finds that any class of
12 transactions is not relevant to the jurisdictional
13 rates of a public utility or natural gas company.

14 **SEC. 1287. AFFILIATE TRANSACTIONS.**

15 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
16 ing in this subtitle shall limit the authority of the Commis-
17 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
18 to require that jurisdictional rates are just and reasonable,
19 including the ability to deny or approve the pass through
20 of costs, the prevention of cross-subsidization, and the
21 issuance of such rules and regulations as are necessary
22 or appropriate for the protection of utility consumers.

23 (b) RECOVERY OF COSTS.—Nothing in this subtitle
24 shall preclude the Commission or a State commission from
25 exercising its jurisdiction under otherwise applicable law

1 to determine whether a public-utility company, public util-
2 ity, or natural gas company may recover in rates any costs
3 of an activity performed by an associate company, or any
4 costs of goods or services acquired by such public-utility
5 company from an associate company.

6 **SEC. 1288. APPLICABILITY.**

7 Except as otherwise specifically provided in this sub-
8 title, no provision of this subtitle shall apply to, or be
9 deemed to include—

10 (1) the United States;

11 (2) a State or any political subdivision of a
12 State;

13 (3) any foreign governmental authority not op-
14 erating in the United States;

15 (4) any agency, authority, or instrumentality of
16 any entity referred to in paragraph (1), (2), or (3);
17 or

18 (5) any officer, agent, or employee of any entity
19 referred to in paragraph (1), (2), (3), or (4) acting
20 as such in the course of his or her official duty.

21 **SEC. 1289. EFFECT ON OTHER REGULATIONS.**

22 Nothing in this subtitle precludes the Commission or
23 a State commission from exercising its jurisdiction under
24 otherwise applicable law to protect utility customers.

1 **SEC. 1290. ENFORCEMENT.**

2 The Commission shall have the same powers as set
3 forth in sections 306 through 317 of the Federal Power
4 Act (16 U.S.C. 825e–825p) to enforce the provisions of
5 this subtitle.

6 **SEC. 1291. SAVINGS PROVISIONS.**

7 (a) IN GENERAL.—Nothing in this subtitle, or other-
8 wise in the Public Utility Holding Company Act of 1935,
9 or rules, regulations, or orders thereunder, prohibits a per-
10 son from engaging in or continuing to engage in activities
11 or transactions in which it is legally engaged or authorized
12 to engage on the date of enactment of this Act, if that
13 person continues to comply with the terms (other than an
14 expiration date or termination date) of any such author-
15 ization, whether by rule or by order.

16 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
17 Nothing in this subtitle limits the authority of the Com-
18 mission under the Federal Power Act (16 U.S.C. 791a et
19 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

20 **SEC. 1292. IMPLEMENTATION.**

21 Not later than 4 months after the date of enactment
22 of this subtitle, the Commission shall—

23 (1) promulgate such regulations as may be nec-
24 essary or appropriate to implement this subtitle
25 (other than section 1285, relating to State access to
26 books and records); and

1 (2) submit to Congress detailed recommenda-
2 tions on technical and conforming amendments to
3 Federal law necessary to carry out this subtitle and
4 the amendments made by this subtitle.

5 **SEC. 1293. TRANSFER OF RESOURCES.**

6 All books and records that relate primarily to the
7 functions transferred to the Commission under this sub-
8 title shall be transferred from the Securities and Exchange
9 Commission to the Commission.

10 **SEC. 1294. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except for section 1292 (relating
12 to implementation), this subtitle shall take effect 6 months
13 after the date of enactment of this subtitle.

14 (b) COMPLIANCE WITH CERTAIN RULES.—If the
15 Commission approves and makes effective any final rule-
16 making modifying the standards of conduct governing en-
17 tities that own, operate, or control facilities for trans-
18 mission of electricity in interstate commerce or transpor-
19 tation of natural gas in interstate commerce prior to the
20 effective date of this subtitle, any action taken by a public-
21 utility company or utility holding company to comply with
22 the requirements of such rulemaking shall not subject
23 such public-utility company or utility holding company to
24 any regulatory requirement applicable to a holding com-

1 pany under the Public Utility Holding Company Act of
2 1935 (15 U.S.C. 79 et seq.).

3 **SEC. 1295. SERVICE ALLOCATION.**

4 (a) FERC REVIEW.—In the case of non-power goods
5 or administrative or management services provided by an
6 associate company organized specifically for the purpose
7 of providing such goods or services to any public utility
8 in the same holding company system, at the election of
9 the system or a State commission having jurisdiction over
10 the public utility, the Commission, after the effective date
11 of this subtitle, shall review and authorize the allocation
12 of the costs for such goods or services to the extent rel-
13 evant to that associate company in order to assure that
14 each allocation is appropriate for the protection of inves-
15 tors and consumers of such public utility.

16 (b) COST ALLOCATION.—Nothing in this section shall
17 preclude the Commission or a State commission from exer-
18 cising its jurisdiction under other applicable law with re-
19 spect to the review or authorization of any costs allocated
20 to a public utility in a holding company system located
21 in the affected State as a result of the acquisition of non-
22 power goods or administrative and management services
23 by such public utility from an associate company orga-
24 nized specifically for that purpose.

1 (c) RULES.—Not later than 6 months after the date
2 of enactment of this Act, the Commission shall issue rules
3 (which rules shall be effective no earlier than the effective
4 date of this subtitle) to exempt from the requirements of
5 this section any company in a holding company system
6 whose public utility operations are confined substantially
7 to a single State and any other class of transactions that
8 the Commission finds is not relevant to the jurisdictional
9 rates of a public utility.

10 (d) PUBLIC UTILITY.—As used in this section, the
11 term “public utility” has the meaning given that term in
12 section 201(e) of the Federal Power Act.

13 **SEC. 1296. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such funds
15 as may be necessary to carry out this subtitle.

16 **SEC. 1297. CONFORMING AMENDMENTS TO THE FEDERAL**
17 **POWER ACT.**

18 (a) CONFLICT OF JURISDICTION.—Section 318 of the
19 Federal Power Act (16 U.S.C. 825q) is repealed.

20 (b) DEFINITIONS.—(1) Section 201(g)(5) of the
21 Federal Power Act (16 U.S.C. 824(g)(5)) is amended by
22 striking “1935” and inserting “2005”.

23 (2) Section 214 of the Federal Power Act (16 U.S.C.
24 824m) is amended by striking “1935” and inserting
25 “2005”.

1 **SEC. 1298. MERGER REVIEW REFORM.**

2 Section 203(a) of the Federal Power Act (16 U.S.C.
3 824b(a)) is amended to read as follows:

4 “(a)(1) No public utility shall, without first having
5 secured an order of the Commission authorizing it to do
6 so—

7 “(A) sell, lease, or otherwise dispose of the
8 whole of its facilities subject to the jurisdiction
9 of the Commission, or any part thereof of a
10 value in excess of \$10,000,000;

11 “(B) merge or consolidate, directly or indi-
12 rectly, such facilities or any part thereof with
13 those of any other person, by any means what-
14 soever;

15 “(C) purchase, acquire, or take any secu-
16 rity with a value in excess of \$10,000,000 of
17 any other public utility; or

18 “(D) purchase, lease, or otherwise acquire
19 an existing generation facility—

20 “(i) that has a value in excess of
21 \$10,000,000; and

22 “(ii) that is used for interstate whole-
23 sale sales and over which the Commission
24 has jurisdiction for ratemaking purposes.

25 “(2) No holding company in a holding company
26 system that includes a transmitting utility or an

1 electric utility shall purchase, acquire, or take any
2 security with a value in excess of \$10,000,000 of, or,
3 by any means whatsoever, directly or indirectly,
4 merge or consolidate with, a transmitting utility, an
5 electric utility company, or a gas utility company, or
6 a holding company in a holding company system
7 that includes a transmitting utility, an electric utility
8 company, or a gas utility company with a value in
9 excess of \$10,000,000 without first having secured
10 an order of the Commission authorizing it to do so.

11 “(3) Upon receipt of an application for such ap-
12 proval the Commission shall give reasonable notice
13 in writing to the Governor and State commission of
14 each of the States in which the physical property af-
15 fected, or any part thereof, is situated, and to such
16 other persons as it may deem advisable.

17 “(4) After notice and opportunity for hearing,
18 the Commission shall approve the proposed disposi-
19 tion, consolidation, acquisition, or change in control,
20 if it finds that the proposed transaction—

21 “(A) will be consistent with the public in-
22 terest, taking into account the effect of the
23 transaction on competition in the electricity
24 markets, electric rates, and effective regulation;
25 and

1 “(B) shall not result in cross-subsidization
2 of a non-utility associate company or the pledge
3 or encumbrance of utility assets for the benefit
4 of an associate company, unless the Commis-
5 sion determines that the cross-subsidization,
6 pledge, or encumbrance would not be harmful.

7 “(5) The Commission shall, by rule, adopt pro-
8 cedures for the expeditious consideration of applica-
9 tions for the approval of dispositions, consolidations,
10 or acquisitions, under this section. Such rules shall
11 identify classes of transactions, or specify criteria for
12 transactions, that normally meet the standards es-
13 tablished in paragraph (4). The Commission shall
14 provide expedited review for such transactions. The
15 Commission shall grant or deny any other applica-
16 tion for approval of a transaction not later than 180
17 days after the application is filed. If the Commission
18 does not act within 180 days, such application shall
19 be deemed granted unless the Commission finds,
20 based on good cause, that further consideration is
21 required to determine whether the proposed trans-
22 action meets the standards of paragraph (4) and
23 issues an order tolling the time for acting on the ap-
24 plication for not more than 180 days, at the end of

1 which additional period the Commission shall grant
2 or deny the application.

3 “(6) For purposes of this subsection, the terms
4 ‘associate company’, ‘holding company’, and ‘holding
5 company system’ have the meaning given those
6 terms in the Public Utility Holding Company Act of
7 2005.

8 “(b) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect 6 months after the date of
10 enactment of this section.”.

11 On page 87, strike line 3 and insert the following:

12 **Subtitle H—Definitions**

13 On page 87, line 4, strike “**1271**” and insert “**1299**”.

14 On page 89, strike lines 3 and insert the following:

15 **Subtitle I—Technical and**
16 **Conforming Amendments**

17 On page 89, line 12, strike “**1281**” and insert
18 “**1299A**”.