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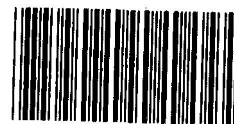
Report to the Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, House of Representatives

April 1992

ELECTRICITY SUPPLY

Regulating Utility Holding Companies in a Changing Electric Industry



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Resources, Community, and
Economic Development Division

B-245680

April 9, 1992

The Honorable Edward J. Markey
Chairman, Subcommittee on
Telecommunications and Finance
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This report responds to your February 19, 1991, request concerning the adequacy of consumer and investor protection in the electric utility industry. As requested, we reviewed (1) recent changes within the electric utility industry that involved utility holding companies;[1] (2) the effect of these changes on the Securities and Exchange Commission's (SEC) administration of the Public Utility Holding Company Act (PUHCA) of 1935, as amended; and (3) the relationship between SEC, the Federal Energy Regulatory Commission (FERC), and state regulators in protecting consumer and investor interests in the changing industry.

PUHCA is designed to discourage utility holding companies from structuring their operations so as to frustrate effective state regulation of their utility subsidiaries. Among other things, the act generally confines a holding company's utility operations to a single geographic area and requires utility holding companies to maintain simple corporate and financial structures.

Results in Brief

The past decade has witnessed significant restructuring within the electric utility industry, including the (1) formation of holding companies[2] by electric utilities and the diversification of such companies into nonutility businesses, (2) mergers or acquisitions of electric utilities by other utilities and utility holding companies, and (3) development of nonutility wholesale generators—generating sources that are not part of a traditional, regulated electric utility—by utility holding companies and others. Economic, legislative, and other related factors have contributed to these structural changes.

[1]A holding company is one that controls partial or complete interests in other companies.

[2]PUHCA defines a holding company as any company or person that directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public utility company or of a company that is a holding company.

Because the past decade's structural changes have involved utility holding companies that are exempt from most PUHCA regulations, SEC's administration of the act has not been greatly affected. All utilities that formed holding companies and diversified into nonutility businesses have qualified for an exemption under the act and, thus, are free from most SEC regulation. As provided by the act, SEC has largely relied on states to regulate exempt holding companies. In addition, less than one-half of the mergers and acquisitions involving utility holding companies were subject to SEC review: Most were either approved by a state in lieu of SEC or implemented in a way that did not require SEC approval. SEC has attempted to accommodate the development of certain nonutility generators within the confines of PUHCA. Specifically, SEC staff have advised utility holding companies and others on how to develop nonutility generators without violating PUHCA restrictions.

Over the past decade, FERC and state regulators have had a greater role than SEC in protecting consumer and investor interests in the changing industry. This is because industry restructuring has largely involved exempt holding companies, which SEC relies on states to regulate, and electric utilities, which are regulated by FERC and state commissions. Among other things, FERC reviews certain mergers and acquisitions to ensure that they are consistent with the public interest, and it approves wholesale rates to ensure that they are "just and reasonable." While most state commissions do not directly regulate utility holding companies, they may review utility transactions directly involving holding companies and nonutility generators, as well as other utility transactions, such as securities issuances and mergers and acquisitions. In addition, the commissions can generally protect consumers from adverse impacts of holding-company diversification through their retail rate-making authority and other means. As a result, state regulators more directly protect consumer and, to a lesser degree, investor interests. However, regulation of utilities and holding companies, as well as the number and operations of such companies, varies among states. We recently reported that proposed PUHCA amendments could increase state and FERC regulatory responsibility for preventing potential abuses regarding wholesale power purchases.[3]

Background

The Congress passed PUHCA in 1935 to regulate utility holding companies and to protect the public, investors, and consumers from abuses that were associated with the control of utility companies through holding company

[3] Electricity Supply: Potential Effects of Amending the Public Utility Holding Company Act (GAO/RCED-92-52, Jan. 7, 1992).

structures. These abuses included subjecting subsidiary utilities to excessive charges for services, construction work, and materials; frustrating effective state regulation through the holding company structure; and overloading subsidiary utilities with debt so as to prevent voluntary rate reductions. While the number of holding companies has declined dramatically since 1938, utility holding companies are still significant in the electric utility industry. In 1989, electric utilities owned by holding companies accounted for about 79 percent of the electricity generated in the United States.

Under PUHCA, utility holding companies must register with SEC unless they qualify for one of the act's exemptions. Those companies not qualifying for an exemption—generally companies with significant multistate utility operations—are called registered holding companies. The utility operations of registered companies are generally limited to a single, integrated public utility system and confined to a single area or region of the country, and any nonutility interest must be related to their utility operations. Registered holding companies and their subsidiaries are subject to extensive SEC regulation.

Utility holding companies qualifying for an exemption are free from most SEC regulation; however, they must generally obtain SEC approval before acquiring other utilities. The vast majority of exempt holding companies obtain their exempt status because (1) the holding company and its utility subsidiaries operate predominantly in one state or (2) the holding company is predominantly a utility whose operations as such do not extend beyond the state in which it is organized and contiguous states. SEC may revoke a company's exemption if it determines that such action is warranted in the interests of the public, investors, or consumers. States and their utility commissions, as well as FERC, are responsible for regulating utilities and monitoring activities of utility holding companies through rate proceedings and other means. (See app. I.)

The Electric Utility Industry Has Experienced Significant Structural Change

Due to economic, legislative, and other related factors, the structure of the electric utility industry has changed considerably over the past decade. The structural changes that have involved utility holding companies include the formation and diversification of utility holding companies, merger and acquisition of utilities, and development of nonutility generators.

Between 1979 and 1991, the number of exempt electric utility holding companies (including combination gas and electric holding companies) increased from 45 to 110.[4] Also, the number of states having at least one exempt company increased from 23 to 36. According to industry analysts, utilities formed holding companies and used their surplus earnings, resulting partly from a slowdown in utility construction, to diversify into nonutility businesses. Supporting this view is the increase in nonutility subsidiaries of exempt holding companies from 113 to 1,669. These nonutility subsidiaries are engaged in businesses ranging from agriculture to finance to cable television. In 1991, nine exempt holding companies in eight states accounted for over 62 percent of all the nonutility subsidiaries.

According to industry and government sources, between 1980 and 1991 over 53 privately owned electric utilities were merged with or acquired by other utilities or utility holding companies.[5] The majority of these utilities were acquired by other privately owned utilities, and 26 of these acquisitions involved utility holding companies. Furthermore, 34 publicly owned utilities were sold or leased to privately owned utilities, and 16 were sold or leased to cooperatively owned utilities in the last decade. The Congressional Research Service recently reported that some view the past mergers as a series of special situations, while others view them as a trend fostered by factors such as strong internal cash flow, growing competition, and excess capacity.[6]

Enacted in part to encourage efficiency in electricity generation, the Public Utility Regulatory Policies Act (PURPA) of 1978, as amended, fostered the creation of nonutility generators that predominantly sell wholesale electricity to utilities for resale to ultimate consumers. Under PURPA, generators that use renewable resources or meet certain technology requirements can become "qualifying facilities" and, thus, not be considered electric utilities under PUHCA. In recent years, other nonutility generators that do not meet PURPA requirements—called independent power producers (IPP)—have emerged to compete in the wholesale power

[4]Figures are based on data contained in SEC's 1979 and 1991 Financial and Corporate Reports for exempt holding companies.

[5]Data documenting all mergers and acquisitions do not exist, and sources do not use identical definitions of "mergers" and "acquisitions." We excluded certain transactions that are technically "acquisitions" under PUHCA (e.g., an existing utility forming and subsequently being "acquired" by a holding company). As a result, our totals differ somewhat from SEC's totals.

[6]Electricity: A New Regulatory Order?, Congressional Research Service report prepared for the House Committee on Energy and Commerce (June 1991).

market and sell wholesale power to utilities.[7] For example, a gas-fired IPP in Nevada sells wholesale power to the Nevada Power Company. Because IPPs do not meet PURPA requirements and therefore are considered to be electric utilities under PUHCA, companies that use a holding company structure to own or operate them are subject to SEC regulation under PUHCA. IPPs include power producers that are not affiliated with a traditional regulated utility and ones that are affiliated. Five IPPs are currently operating and 38 are under development, according to a 1991 report commissioned by the National Independent Energy Producers, an organization representing nonutility generators.

SEC Administration of PUHCA Has Been Largely Unaffected by Industry Changes

Because the structural changes have involved exempt utility holding companies, SEC's administration of PUHCA has been largely unaffected. The number of registered electric utility holding companies, which are subject to extensive SEC regulation, has remained at 10 over the past decade. As provided by the act, SEC has continued to rely largely on states to regulate exempt holding companies and their nonutility subsidiaries. Unlike registered holding companies, exempt holding companies may diversify into nonutility-related businesses. SEC, however, may revoke a holding company's exemption if it determines that its diversification activities are, or could be, detrimental to the public, consumers, or investors. SEC monitors exempt holding companies by reviewing their annual SEC filings and industry publications. Due in part to the substantial diversification by some exempt holding companies, SEC proposed a rule in 1989 to clarify the appropriate standards for diversification by exempt holding companies.[8] Comments on the proposed rule were generally unfavorable, and SEC has not yet taken final action on the proposed rule. (See app. III for more information on SEC regulation of holding-company diversification.)

Between 1980 and 1991, there were 26 electric utility acquisitions that involved utility holding companies: 17 privately owned utilities were acquired by exempt holding companies or their utility subsidiaries, and 9 privately owned utilities were acquired by registered holding companies or their utility subsidiaries. As provided by the act, SEC reviewed and subsequently approved six of these acquisitions for exempt companies and six for registered companies. SEC approval was not required for the remaining 14 utility acquisitions: Six were approved by a state commission

[7]Although IPPs are considered to be electric utilities under PUHCA, we included them in the nonutility-generator category because they typically are not part of a traditional utility.

[8]The proposed rule would only apply to utility holding companies that qualified for an exemption because they and their utility subsidiaries operate predominantly in one state.

as provided by PUHCA, and 8 were consummated so that the acquired utility immediately merged with the exempt holding company or its utility subsidiary.

SEC has attempted to accommodate IPP development within the legal and regulatory framework established by PUHCA. The act can impede the development of IPPS by (1) precluding utility holding companies from owning or operating IPPS in states located outside their operating areas and (2) deterring other companies, such as engineering or construction firms with electrical expertise, from owning or operating IPPS.[9] SEC staff have informally advised developers on the applicability of PUHCA with respect to the formation of IPPS. Based on staff advice, IPPS have been developed in ways that enable (1) utility holding companies to own a noncontrolling interest in IPPS located in states outside their operating areas and (2) other companies to own a noncontrolling interest in IPPS and, thus, not meet the act's definition of a utility holding company.

FERC and States Have Had the Major Role in Regulating Industry Changes

SEC regulation of public utility holding companies, coupled with FERC and state regulation of utilities, is designed to protect consumer and investor interests. SEC does not regulate utilities per se, but its enforcement of PUHCA is intended to complement FERC and state regulation of utility rates and transactions by restricting the corporate structure and financing of utility holding companies and their subsidiaries. Because recent industry changes have largely involved utilities and exempt holding companies, states and FERC have had the major onus for protecting utility consumers and investors.

Under the Federal Power Act, FERC regulates certain transactions of utilities, and these utilities may be owned by holding companies.[10] Owners of electric facilities under FERC jurisdiction must obtain the commission's approval before selling, merging, consolidating, or otherwise disposing of their jurisdictional facilities.[11] To approve a merger or acquisition, FERC must find that it will be consistent with the public interest. Under such authority, FERC has determined that it may (1) disapprove the formation of

[9]By owning or operating an IPP, such companies would be defined as public utility holding companies under PUHCA and thus subject to SEC regulation.

[10]The Federal Power Act, administered by FERC, and PUHCA were enacted under the Public Utility Act of 1935 as separate but companion pieces of legislation designed to regulate the electric utility industry.

[11]With some exceptions, facilities subject to FERC jurisdiction are those used to transmit electricity in interstate commerce or to sell wholesale power in interstate commerce.

a holding company by a utility owning jurisdictional facilities or (2) place conditions on the use of the utility's operating funds in cases where it finds sufficient potential for harm to consumer interests from diversification or other activities. In addition, FERC is responsible for ensuring that the rates, terms, and conditions for wholesale power sold from IPPs are just and reasonable and nondiscriminatory. In reviewing wholesale rates for IPPs, FERC has taken measures to deter potential abuses involving transactions between IPPs and utilities that are affiliated with the same utility holding company.

State utility commissions generally do not regulate utility holding companies, but rather their utility subsidiaries. Although regulation of utilities varies among states, state commissions generally establish retail electric rates and review transactions between a utility and its holding company as well as other utility transactions, such as securities issuances and dividend payments. In our survey of state utility commissions, 30 commissions responded that they do not regulate nonutility-related diversification by exempt holding companies.[12] However, 20 of these commissions said they could remedy any detrimental effects on utility consumers resulting from such activity. State commissions, for example, can use their retail rate-making authority to protect against higher costs resulting from holding-company diversification from being passed on to utility customers. Also, state utility commissions or legislatures can develop rules or statutes to regulate utility holding companies and their diversification activities. (See app. IV for more information on state regulation of utility holding companies.)

Although FERC has jurisdiction over wholesale rates for electric power sales from IPPs, state commissions can impose conditions on utilities that purchase energy from IPPs to protect consumer interests. For example, state commissions have precluded regulated utilities, in limited circumstances, from purchasing power from affiliated IPPs and/or limited utilities from passing on power-purchase costs to retail ratepayers. Two state commissions responding to our survey said they do not allow regulated utilities to purchase power from affiliated nonutility generators, and 40 commissions said they have authority to disallow utilities from passing on, through retail rates, wholesale power-purchase costs.

[12]We surveyed 51 public utility commissions, including the District of Columbia, on PUHCA-related matters. Forty-eight commissions responded.

Observations

The restructuring of the electric utility industry—formation of exempt holding companies, mergers and acquisitions of utilities, and development of IPPS—has occurred within the regulatory framework established by PUHCA and the Federal Power Act. SEC only indirectly protects consumer interests by regulating utility holding companies under PUHCA. FERC, under the Federal Power Act, and state commissions directly protect consumer interests by regulating factors such as electricity rates. Thus, the extent to which the interests of utility consumers and, to a lesser degree, investors are protected is determined more by the activities of FERC and state regulators than SEC.

Agency Comments

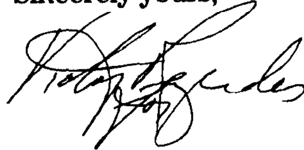
SEC and FERC provided written comments on a draft of this report. They generally agreed with its contents and suggested several changes to improve its technical accuracy. We incorporated their suggestions where appropriate. (See app. V for the SEC and FERC letters.) We also discussed the report's factual information on state regulation of utilities and utility holding companies with a responsible official from the National Association of Regulatory Utility Commissioners, who agreed with the information.

To respond to your request, we interviewed SEC and FERC officials regarding their policies and procedures for regulating electric utilities and utility holding companies. We reviewed provisions of PUHCA and the Federal Power Act; numerous SEC reports and documents; recent congressional hearings; and various other federal, state, and industry reports and publications pertaining to the electric utility industry. We also surveyed state utility commissions. Our field work was done between May and December 1991 in accordance with generally acceptable government auditing standards. (App. I provides more information on our objectives, scope, and methodology.)

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of the report to the Chairmen of the Securities and Exchange Commission and the Federal Energy Regulatory Commission. We will also make copies available to others upon request.

If you have any questions or need additional information about this report, please contact me at (202) 275-1441. Major contributors to this report are listed in appendix VI.

Sincerely yours,



Victor S. Rezendes
Director, Energy Issues

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Abbreviations

FERC	Federal Energy Regulatory Commission
GAO	General Accounting Office
IPP	independent power producer
NARUC	National Association of Regulatory Utility Commissioners
PUHCA	Public Utility Holding Company Act
PURPA	Public Utility Regulatory Policies Act
SEC	Securities and Exchange Commission

Background

The U.S. electric utility industry consists of privately, publicly, federally, and cooperatively owned electric utilities. In terms of the portion of electricity generated, the industry is dominated by the 265 privately owned utilities (also called investor-owned utilities); these utilities account for more than 75 percent of the generating capability of all U.S. electric utilities. More than one-half of these utilities are organized using a holding company structure. In general, a holding company owns interests in other companies in order to control or influence their policies and management.

The majority of privately owned utilities are vertically integrated monopolies. Utilities that are integrated own and operate the facilities used in all three stages of electricity supply: generation, transmission, and distribution. Generation is commonly divided into two categories: wholesale electricity (power for resale) and retail electricity (sales to consumers). As monopolies, electric utilities supply retail electricity within designated geographic service areas, with no retail competition from other suppliers. In exchange for their monopoly status, utilities are regulated and required to provide reliable electric service to all customers within their service area.

Regulation of the Electric Utility Industry

The electric utility industry is subject to both federal and state regulation. The Public Utility Holding Company Act (PUHCA) of 1935, as amended, authorizes the Securities and Exchange Commission (SEC) to regulate the corporate and financial structure of public utility holding companies and their subsidiaries. Enacted as companion legislation to PUHCA, the Federal Power Act, as amended, authorizes the Federal Energy Regulatory Commission (FERC), Department of Energy, to regulate the transmission and sale of wholesale electricity in interstate commerce. State utility commissions, among other things, set retail rates and oversee utility transactions. In addition, other federal laws serve to regulate utility holding company systems.

SEC Regulation of Public Utility Holding Companies

PUHCA is designed to promote an industry structure that enables effective state regulation of utility transactions. In passing the act, the Congress sought to protect the public, investors, and consumers from abuses associated with the control of electric and gas utilities that had occurred through the use of holding company structures. Such abuses included

- the issuance of securities[1] without approval by states having jurisdiction over subsidiary companies;
- an absence of arm's-length bargaining, resulting in a subsidiary company paying excessive charges for services, construction work, equipment, and materials;
- the allocation of charges by the holding company among its subsidiaries in different states, so that the states could not effectively regulate; and
- the growth and extension of holding companies in ways unrelated to economy of management and operation or to the integration and coordination of related operating facilities.

All companies that meet PUHCA's definition of a utility holding company must register with SEC, unless they qualify for an exemption. Those holding companies not qualifying for an exemption—generally companies with significant multistate utility operations—are called registered holding companies. Registered holding companies and their subsidiaries are subject to extensive SEC regulation. Among other things, these companies and their subsidiaries must file annual reports with SEC and obtain its prior approval to issue securities and acquire utility assets or interests in any other business.

PUHCA generally requires that SEC limit a registered holding company's utility operations to a single integrated public-utility system, confined to a single area or region. The act further requires such a holding company and its subsidiaries to maintain simple corporate and financial structures. SEC may require a registered holding company system to reorganize and divest certain interests where necessary to achieve the act's standards. Since 1938, SEC has reduced the number of registered holding companies from over 200 to 13. Currently, nine electric and three gas utility holding companies are registered under the act.[2] According to SEC officials, in 1989, the nine registered electric utility holding companies accounted for about 25 percent of the electricity generated in the United States.

Utility holding companies qualifying for an exemption are called exempt holding companies and are free from most SEC regulation. Although exempt holding companies are required to obtain SEC approval before acquiring 5 percent or more of another utility's voting securities, regulation of them is generally left to the states. Virtually all exempt

[1]Securities include any note, draft, stock, bond, debenture, or instrument used to guarantee an obligation.

[2]This total excludes the Philadelphia Electric Power Company, an unusual registered holding company whose only electric utility subsidiary consists of a hydroelectric project.

holding companies have obtained their exemption because (1) the holding company and its utility subsidiaries operate predominantly in one state or (2) the holding company is predominantly a utility whose operations do not extend beyond the state in which it is organized and contiguous states.[3] SEC may revoke a company's exemption if it determines that such action is warranted in the interests of the public, investors, or consumers. Since the act's passage, SEC has revoked the exemption of one electric utility holding company (1945) and one gas utility holding company (1981). State authorities in Arizona and Michigan have requested that SEC revoke or modify two utility holding companies' exemptions, and these requests are pending. In 1991, 81 electric, 53 gas, and 29 combination electric and gas companies were exempt under the act. According to SEC officials, in 1989, the exempt electric and combination companies accounted for about 54 percent of the electricity generated in the United States.[4]

SEC administers PUHCA through its Office of Public Utility Regulation, Division of Investment Management. Currently, 23 staff are assigned to utility regulation. The staff is composed of 17 attorneys, 3 financial analysts, 1 accountant, and 2 secretaries.

FERC and State Regulation of Utilities

Under the Federal Power Act, FERC is primarily responsible for setting rates, terms, and conditions for the sale and transmission of electricity sold at wholesale; regulating mergers, dispositions, and acquisitions of facilities used to sell and transmit wholesale energy (referred to as jurisdictional facilities); and authorizing the issuance of securities and assumption of liabilities in those instances where states do not regulate them. The Federal Power Act requires that rates for wholesale electric energy sales and for the transmission of electric energy in interstate commerce be "just and reasonable," without undue preference or advantage to any person.

State utility commissions are primarily responsible for setting retail electricity prices for utilities under their jurisdiction and for regulating utility transactions, such as dividend payments, securities issuances, and contracts between utilities and affiliated companies. Regulated utilities are generally allowed to charge rates which provide the opportunity to earn a fixed rate of return, approved in advance by regulators, on their approved utility assets (called the rate base). As discussed in appendix IV, the scope

[3]The act also exempts companies that are only incidentally or temporarily holding companies, or that predominantly own or operate utility properties abroad.

[4]Utilities that are not part of a holding company system accounted for the remaining 21 percent of electricity generated in the United States.

and extent of state regulation of utility and holding company transactions varies among the states.

Other Federal Laws Regulate Utilities and Holding Companies

Other federal laws serve to regulate electric utilities and utility holding companies. For example, the Securities Act of 1933, as amended, and the Securities and Exchange Act of 1934, as amended, require utilities and utility holding companies to file reports and disclose investor-related information to SEC when securities are sold to the public. However, these securities acts differ from PUHCA in that they do not require SEC approval for securities transactions and are designed to protect only investor interests. In addition, the Clayton Act, as amended, and the Sherman Act, as amended, prohibit certain transactions, such as mergers or acquisitions, that would result in a restraint of trade or exercise of monopoly power.

Objectives, Scope, and Methodology

Concerned with the adequacy of investor and consumer protection in the electric utility industry, the Chairman of the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, asked us in a February 19, 1991, letter to review (1) recent changes within the electric utility industry that involved utility holding companies, (2) the effect of these changes on the SEC's administration of PUHCA , and (3) the relationship between SEC, FERC, and state regulators in protecting consumer and investor interests in the changing industry.

To review recent changes in the electric utility industry that involved utility holding companies, we conducted a literature survey and reviewed various studies, reports, and other publications pertaining to the electric utility industry. We interviewed SEC and FERC staff responsible for electric power regulation and contacted officials from the American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, National Independent Energy Producers, and National Rural Electric Cooperative Association. We also surveyed the utility regulatory commissions in all 50 states and the District of Columbia to document, among other things, changes in the electric utility industry involving utility holding companies. All but three commissions responded to our survey.

To review the effect of these changes on SEC's administration of PUHCA, we interviewed SEC staff to discuss their policies and procedures for administering the act. We reviewed the act's provisions, its rules and regulations (including amended and proposed rules), and background

information. In addition, we reviewed testimony from congressional hearings on PUHCA and various SEC reports and documents, including annual reports; registered and exempt utility holding company reports; correspondence between SEC and independent power producers; comment letters on a proposed rule; and court cases. Although we reviewed SEC policies and procedures for granting exemptions to utility holding companies, we did not review SEC's decisions on an individual-company basis.

To review the relationship between SEC, FERC, and states in regulating the electric utility industry, we interviewed SEC and FERC officials responsible for electric power regulation. In our survey of state utility commissions, we included questions about their authority to regulate electric utilities and utility holding companies. In addition, we contacted officials from several state utility commissions, including Arizona, California, Louisiana, Massachusetts, Montana, Nevada, and Rhode Island, to document their regulation of utility holding companies and/or utilities. We reviewed provisions of the Federal Power Act and the Public Utility Regulatory Policies Act, as amended, as well as various reports and other publications regarding FERC and state regulation of the electric utility industry.

We obtained agency comments on the report from SEC and FERC, as well as discussed factual information in the report with a responsible official from the National Association of Regulatory Utility Commissioners. We conducted our review between May and December 1991 in accordance with generally acceptable government auditing standards.

The Electric Utility Industry Has Experienced Significant Change

In the past decade, structural changes involving utility holding companies have occurred in the electric utility industry. These changes include the formation of exempt utility holding companies and their diversification into nonutility businesses, mergers and acquisitions of electric utilities, and development of nonutility generators.

Formation and Diversification of Exempt Holding Companies

Between 1979 and 1991, the number of registered electric utility holding companies remained at 10, while the number of exempt electric utility holding companies (including combination gas and electric holding companies) increased from 45 to 110.[1] The growth in exempt holding companies occurred throughout the United States, with the number of states having at least one exempt holding company growing from 23 to 36.

In most cases, utilities formed holding companies to diversify into nonutility business. According to industry analysts, many electric utilities experienced surplus earnings, resulting in part from a slowdown in power plant construction. This situation presented utilities and exempt utility holding companies with the option of diversifying into nonutility-related businesses, as well as with the options of paying higher dividends to investors, decreasing consumer utility rates, or pursuing other business strategies. Between 1979 and 1991, the number of nonutility subsidiaries of exempt holding companies increased from 113 to 1,669. These nonutility subsidiaries are engaged in a variety of business activities, including finance, real estate, agriculture, telecommunications, and cable television.

The growth in nonutility subsidiaries is concentrated in several states and companies. For example, in 1991, 9 exempt holding companies in eight states have over 50 nonutility subsidiaries each, and collectively, they account for over 62 percent of all the nonutility subsidiaries. In 1990, exempt holding companies' nonutility businesses had over $43 billion in assets, or about 17 percent of the total assets of these holding companies, and about $25 billion in revenues, or about 24 percent of the total revenues of such companies.[2]

As a corporate strategy, diversification can lead to improved earning prospects for investors and reduce a utility's cost of capital if such activity

[1]Calculations are based on data contained in SEC's 1980 and 1990 Financial and Corporate Reports for registered holding companies and its 1979 and 1991 Financial and Corporate Reports for exempt holding companies. SEC's 1990 and 1991 reports were the most recent ones available at the time of our review.

[2]These totals include gas, electric, as well as combination gas and electric utility holding companies.

is successful. However, diversification could also adversely affect the rates consumers pay for electricity by increasing the utility's cost of capital if the nonutility investments fail. According to SEC, other potential detriments associated with diversification include diverting management expertise away from the utility to the nonutility businesses and having utilities make purchases from nonutility affiliates at above market prices.

Utility Mergers and Acquisitions

In the past decade, a number of electric utilities have merged with or have been acquired by other utilities or utility holding companies. These mergers and acquisitions have involved privately, publicly, and cooperatively owned utilities. Data compiled from various sources, including the Edison Electric Institute (an association representing privately owned utilities), SEC, and FERC, show that 53 privately owned utilities were merged with or acquired by other utilities between 1980 and 1991. The majority of these utilities were acquired by other privately owned utilities. Seventeen of these transactions involved utilities owned by exempt holding companies and 9 involved utilities owned by registered holding companies. Furthermore, data provided by the American Public Power Association (a group representing publicly owned utilities) show that 34 public utilities were sold or leased to private utilities, and 16 public utilities were sold or leased to cooperative utilities between 1980 and 1990.

There is no consensus on the factors underlying recent utility merger and acquisition activity. The Congressional Research Service recently reported that some view these mergers as a series of special situations, while others view them as a trend fostered by factors such as strong internal cash flow, growing competition, and excess capacity.[3] Among other reasons, utilities have sought to merge or acquire other utilities to reduce costs by eliminating overlapping functions and to maximize their value by improving economies of scale, achieving a greater degree of employee expertise, and better integrating new technologies.

While utility mergers and acquisitions can improve the efficiency and effectiveness of utility operations, they can also be detrimental to public, consumer, and investor interests. A utility merger may adversely affect market competition, the merged company's financial position, the quality of service provided to consumers, and/or a state commission's ability to effectively regulate the resulting merged company. For example, in reviewing a proposed merger, the California Public Utilities Commission

[3]Electricity: A New Regulatory Order? Congressional Research Service report prepared for the House Committee on Energy and Commerce (June 1991).

recently concluded, among other things, that the merged company would exert increasing pressure on the commission's resources by expanding the geographic scope and extent of potential self-dealing (preferential treatment) in its relations with affiliates.

Development of Nonutility Generators

Over the past decade, utilities have increasingly turned to purchasing power, instead of generating it themselves, to meet increases in demand and avoid risks associated with plant construction. The Public Utility Regulatory Policies Act (PURPA) of 1978, as amended, fostered the development of nonutility wholesale generators—generating sources that are not part of a regulated utility's rate base. Enacted in part to encourage efficiency in electricity production, PURPA promoted this development by requiring utilities to purchase power offered by qualifying facilities[4] at prices established by state regulators. As provided by PURPA, most qualifying facilities are not considered to be electric utilities under PUHCA. Utilities and utility holding companies are allowed to own up to 50 percent interest in qualifying facilities.

In recent years, some nonutility generators, commonly referred to as independent power producers (IPPs), have emerged to sell wholesale power to utilities and compete in wholesale power markets. IPPs are considered to be electric utilities under PUHCA, since they do not meet the fuel or technology requirements of PURPA in order to be considered qualifying facilities.[5] Furthermore, IPPs are commonly financed using a holding company structure; therefore, companies that own or operate them are typically subject to SEC regulation under PUHCA. Five IPPs are currently operating and 38 are under development, according to data contained in a 1991 report commissioned by the National Independent Energy Producers (an organization representing nonutility generators).

An IPP may be owned by a utility holding company, subject to SEC regulation under PUHCA, and may sell wholesale electricity to a utility that is owned by the same holding company. In such a situation, the IPP could potentially abuse its relationship with the affiliated utility in ways that would be harmful to the interests of the electricity consumers. For

[4]Qualifying facilities are (1) certain generators that use renewable resources such as solar or wind energy and (2) cogenerators that use fuel to produce heat or steam for industrial or commercial purposes and for electricity production.

[5]Although IPPs are considered to be electric utilities under PUHCA, we included them in the nonutility-generator category because they typically are not part of a traditional utility.

example, an IPP could engage in nonarm's-length bargaining with an affiliated utility and charge the utility an inflated price for electricity.

The advent of qualifying facilities and IPPs has been accompanied by other factors leading to increased competition in the wholesale electricity generating business. As we previously reported, these developments have the potential to lower utilities' power supply costs and thus be beneficial to electricity consumers' interests.[6] However, there is relatively little operating experience to demonstrate the long-term reliability and cost-effectiveness of nonutility generators.

[6]See Electricity Supply: The Effects of Competitive Power Purchases Are Not Yet Certain (GAO/RCED-90-182, Aug. 23, 1990) and Electricity Supply: Potential Effects of Amending the Public Utility Holding Company Act (GAO/RCED-92-52, Jan. 7, 1992).

SEC Administration of PUHCA Has Not Been Greatly Affected by Industry Changes

Because the electric industry's structural changes primarily have involved exempt utility holding companies, SEC's administration of PUHCA has not been greatly affected. As provided by the act, SEC has continued to rely largely on state utility commissions to regulate exempt holding companies. In addition, SEC has continued to review utility mergers and acquisitions involving holding companies and attempted to accommodate IPP development.

SEC Largely Leaves Regulation of Exempt Holding Companies to States

As provided by the act, SEC has continued to rely largely on states and their utility commissions to regulate exempt utility holding companies and their nonutility subsidiaries. Recognizing the potential detriment of exempt holding companies' diversification into nonutility businesses, SEC has proposed but not yet taken final action on a formal rule regarding this issue.

Unlike registered holding companies, exempt holding companies are not expressly prohibited by PUHCA from diversifying into nonutility-related businesses. SEC, however, may deny an exemption to a holding company or revoke a holding company's existing exemption if it determines that diversification activities are, or could be, detrimental to the public, consumers, or investors. SEC staff told us that they monitor the activities of exempt holding companies by contacting the companies and reviewing their annual SEC filings, as well as by reviewing industry publications and contacting other federal and state regulators.

In a 1973 case, four SEC commissioners considered for the first time whether an exempt utility holding company's diversification into nonutility businesses made its continued exemption detrimental to public, investor, or consumer interests under PUHCA. Because the SEC commissioners were unable to agree on whether the company met the appropriate standards, the commission did not take action to revoke the company's exemption.

In 1986, the substantial diversification activities by some exempt holding companies raised questions concerning whether these companies should continue to be exempt holding companies under the act. Specifically, SEC staff requested four exempt holding companies to justify why their exempt status should remain valid in light of their diversification activities. SEC staff decided not to recommend formal action against any of these companies, but rather decided to develop a generic rule establishing diversification standards for exempt holding companies.

In 1989, SEC proposed a rule specifying the circumstances in which nonutility diversification by an exempt utility holding company would not be deemed detrimental to public, investor, or consumer interests.[1] However, comments on the proposed rule were generally unfavorable. For example, the Edison Electric Institute commented that, among other things, no justification for the rule had been shown and the proposed rule should be abandoned. The American Public Power Association, representing publicly owned electric utility systems, also opposed the proposed rule, in part because SEC presented no sound justification as to the need for the proposed rule.

State commission comments on the proposed rule were mixed, in part reflecting the states' differing experiences with diversification by their regulated utilities. The Iowa commission, for example, commented that diversification efforts have had positive effects on the market's treatment of the stock of Iowa utilities. In contrast, the New Jersey commission wrote that utilities in its state had experienced negative results from holding company diversification. As an example, the commission said that a utility's bond ratings were downgraded because of financial pressures caused by the rapid pace of investments in nonutility ventures.

Nine commissions supported the rule or its objectives, but four of them commented that diversification by exempt holding companies is primarily a state concern. Four other commissions opposed the rule, commenting that diversification by exempt holding companies is a state concern or citing the absence of evidence supporting that diversification is harmful. Similarly, the National Association of Regulatory Utility Commissioners recommended that the proposed rule be withdrawn, in part because states can monitor diversification efforts and prevent abuses through their rate-making authority, police power, or by enacting specific legislation. SEC has not yet taken final action on the proposed rule.

SEC Continues to Review Utility Mergers and Acquisitions

Under PUHCA, SEC approval is generally required before a registered or exempt holding company may acquire an interest in another utility. To approve a utility acquisition, SEC must find that (1) the proposed acquisition will not result in a concentration of control that is detrimental to the public, consumers, or investors; (2) the consideration paid is not unreasonable; and (3) the resulting capital structure of the holding company is not unduly complicated or detrimental to the public,

[1]The proposed rule would only apply to utility holding companies that qualified for an exemption because they and their utility subsidiaries operate predominantly in one state.

consumers, or investors. In addition, the utility operations being acquired must be capable of being physically interconnected with the acquiring company's utility operations and confined to the same geographic area or region. Last, SEC may not approve an acquisition unless it appears that all applicable state laws have been met.

SEC regulation of utility mergers and acquisitions has been limited because many of these transactions have not involved utility holding companies or required SEC approval. Nonetheless, between 1980 and 1991, 17 privately owned electric utilities were acquired by exempt holding companies or their utility subsidiaries, and 9 privately owned electric utilities were acquired by registered holding companies or their utility subsidiaries. As provided by the act, SEC reviewed and subsequently approved six of these transactions for exempt companies and six for registered companies. SEC approval was not required for the remaining 14 utility acquisitions: Six were acquisitions of utility assets that were approved by a state commission instead of by SEC, and eight were consummated so that the acquired utility immediately merged with the exempt holding company or its utility subsidiary (obviating the need for SEC review).

SEC Has Attempted to Accommodate IPP Development

SEC has attempted to accommodate IPP development within the legal and regulatory framework established by PUHCA. Because IPPs are considered to be electric utilities under PUHCA, both registered and exempt holding companies must obtain SEC approval before acquiring an IPP, and SEC may only approve such an acquisition if the resulting utility operations will be integrated and confined to a single area or region. As a result, the act generally precludes both registered and exempt holding companies from owning or operating IPPs in states located outside their service areas.

The act similarly deters nonutility companies, such as engineering and construction firms with electrical expertise, from owning or operating IPPs. Such companies would be defined under the act as electric utility holding companies, thus limiting their ability to develop IPPs in other areas and diversify into other nonutility businesses. Furthermore, if they did not qualify for an exemption, such companies would have to divest all of their nonutility-related businesses.

On the basis of advice from SEC staff, IPPs have been developed in ways that enable (1) exempt holding companies to own a noncontrolling interest in IPPs that are located in states outside their operating areas and (2) nonutility companies to own a noncontrolling interest in IPPs without

meeting the act's definition of a utility holding company. For example, utility holding companies and nonutility companies have developed IPPs by organizing a limited partnership, in which the limited partner (which may be a utility holding company or nonutility company) invests in the project but relinquishes its right to control the project's day-to-day operations to the general partner. The limited partner gains the economic benefits of IPP ownership without becoming subject to PUHCA restrictions, since it will not own a controlling interest and meet the act's definition of a utility holding company. However, the general partner is subject to PUHCA because it controls the IPP and thereby meets the act's definition of a utility holding company. Other business structures have been used to develop IPPs, but none is completely free from PUHCA regulation, since the company controlling the IPP meets the definition of a utility holding company.

SEC staff have advised developers about the applicability of PUHCA with respect to the formation of IPPs through no-action letters. A no-action letter is an informal way of informing developers that their IPP projects, if financed and developed as proposed, will not warrant SEC enforcement action under PUHCA. For example, SEC issued a no-action letter to companies using a limited partnership to develop an IPP. In the letter, SEC staff recommended no enforcement action because the developer became a general partner and circumstances indicated that the limited partners would not exercise such a controlling influence as to warrant regulation as a holding company. IPP developers request no-action letters by submitting a letter presenting how the IPP will be constructed and operated, including the companies involved and their financial interest in the project. SEC staff said they have issued seven no-action letters on IPPs since 1986.

SEC staff have recently encouraged IPP developers to request a formal order from the SEC commissioners—instead of an informal no-action letter from the staff—to determine their status under PUHCA. According to SEC, one IPP developer has applied for a formal order declaring it not to be a utility holding company under PUHCA. By issuing orders on IPPs, the commission could develop a body of case law that would provide guidance on the circumstances in which IPP developers may develop projects without becoming subject to the act's restrictions. In addition, the order process, unlike the no-action process, affords interested parties the opportunity to request a hearing to comment on the proposed transaction.

FERC and States Have Had Major Role in Regulating Industry Changes

SEC regulation of public utility holding companies, coupled with FERC and state regulation of utility rates and transactions, is designed to protect public, consumer, and investor interests. Although SEC does not directly regulate utilities per se, its enforcement of PUHCA complements FERC and state regulation of utilities by restricting the corporate structure and financing of public utility holding companies and their subsidiaries. Because industry structural changes over the past decade have largely involved utilities and exempt holding companies, FERC and state regulators have had the greatest role in protecting consumer and investor interests.

FERC Regulates Certain Mergers, Acquisitions, and IPP Rates

Under the Federal Power Act, as amended, FERC regulates owners of facilities used to transmit electricity in interstate commerce or sell wholesale power in interstate commerce (referred to as jurisdictional facilities). Although FERC does not regulate utility holding companies that are not themselves public utilities, it does regulate owners of jurisdictional facilities, which includes holding companies' utility subsidiaries. As of July 1991, more than 200 jurisdictional facilities were operating, the majority of which were owned by registered or exempt holding companies' utility subsidiaries.

FERC Regulation of Mergers and Acquisitions

FERC regulates acquisitions, mergers, and dispositions of jurisdictional facilities that are valued in excess of $50,000. The Federal Power Act requires that owners of jurisdictional facilities obtain FERC approval before selling, merging, consolidating, or otherwise disposing of such facilities. (Owners of such facilities are also required to obtain FERC approval for issuing securities and for assuming liabilities, unless their security issuances are regulated by a state commission.) To approve a utility merger or acquisition, FERC must find that it will be consistent with the public interest. FERC criteria for determining whether a transaction will be in the public interest include (1) the transaction's effect on operating costs and rate levels, (2) contemplated accounting treatment, (3) reasonableness of the purchase price, (4) whether the target utility was coerced into accepting the merger, (5) the effect of the transaction on competition, and (6) the effect on FERC's or state regulatory commissions' ability to effectively regulate.

Although FERC does not directly regulate diversification by utility holding companies, it has addressed the issue under its authority to review utility mergers and acquisitions. In a 1987 case, FERC determined that it could disapprove the formation of a holding company by a utility owning

jurisdictional facilities or place appropriate conditions on the use of the utility's operating funds in cases where it finds sufficient potential for abuse regarding diversification or other activities. FERC approved the transaction because sufficient safeguards existed to prevent any possible detriment to the utility's consumers. According to FERC, the commission also has the ability, under its rate-making authority, to refuse to reflect in rates higher capital costs resulting from utility diversification.

FERC Regulation of IPPs

FERC is responsible for reviewing the rates at which IPPs sell energy at wholesale and ensuring that such rates are just and reasonable, without undue preference or advantage. An IPP may seek FERC approval of wholesale rates that are based on its cost of supplying energy (cost-based rates) or rates that are determined through a competitive or negotiated process between it and the purchasing utility (market-based rates). Incentives are greater for IPPs to seek market-based rates, in part because of the potential to earn a higher return on wholesale power sales.

According to a FERC official responsible for regulating wholesale power transactions, the greatest potential for abuse regarding an IPP transaction exists when an IPP sells wholesale energy to an affiliated utility. Under such circumstances, the IPP or its holding company could use its relationship to overcharge the affiliated utility for energy, improperly allocate costs between it and the affiliated utility, or preclude other nonaffiliated suppliers from effectively competing to sell energy to the affiliated utility. To prevent such abuses from occurring, FERC has approved market-based rates for affiliates when the IPP either does not have market power in the relevant market or has taken steps to mitigate any market power it may have because of its affiliation with the purchasing utility. The FERC official said that denying market-based rates eliminates the major incentive for an IPP to abuse its affiliated utility: The IPP will have to seek a cost-based rate instead of a market-based rate, thus limiting its return to a fixed rate calculated on its cost of supplying energy to the utility.

Electric Utility Regulation Varies Among States

State utility commissions generally do not regulate utility holding companies but rather regulate utility subsidiaries of such companies. Although essentially all state commissions regulate utility rates and related activities, the scope and nature of state regulation of utilities and utility holding companies vary from state to state.

Transactions Between Utilities and Holding Companies

Although most state utility commissions do not directly regulate utility holding companies, they generally may review transactions between utilities and their holding companies and regulate other utility transactions. The 1990 annual report of the National Association of Regulatory Utility Commissioners (NARUC) shows that the majority of states have accounting and reporting requirements for affiliate transactions, although they differ among states. These requirements, for example, may allow a state commission to review a transaction between a utility and its holding company during rate proceedings or require a utility to report any such transactions to the commission. State utility commissions may also regulate utility transactions such as security issuances and dividend payments to protect utility consumers and investors. NARUC's 1990 annual report indicates that nearly all state commissions regulate security issuances, and 16 commissions regulate dividend payments.

Diversification Activities

Most state utility commissions do not regulate nonutility-related diversification by exempt holding companies, but they generally have the means available to protect utility consumers from adverse impacts of diversification. Thirty state utility commissions responding to our survey said that they do not regulate nonutility-related diversification by exempt holding companies.[1] Twenty of these commissions said they could remedy abuses resulting from such activities, but 4 commissions said they probably could not and 6 were uncertain. In contrast, 2 commissions said they require utility holding companies to obtain prior commission approval for all nonutility-related diversification, and 17 commissions regulate such activity on a case-by-case basis or by some other means.

State commissions can protect consumers from adverse impacts of holding-company diversification through their retail rate-making authority. For example, a state commission can exclude higher costs that result from diversification activity, such as increased capital costs due to lowered bond ratings, from the rates charged by utilities to their retail customers. Among other things, state commissions or legislatures can develop rules or statutes to regulate utility holding companies, including their formation and diversification activities. For example, Wisconsin has a state holding company law that serves to insulate utility subsidiaries of utility holding companies from the effects of nonutility-related diversification.

[1]We surveyed 51 public utility commissions, including the District of Columbia, on PUHCA-related matters. Forty-eight commissions responded but not necessarily to all questions.

Although state utility commissions have the means available to protect consumers from adverse impacts of holding-company diversification, it may be difficult for commissions to remedy such impacts once they have occurred. For example, in a letter sent to SEC requesting the revocation of a holding company's exemption, the Arizona Corporation Commission said that a utility holding company's financial problems, stemming from its diversification activities, have jeopardized the effectiveness of the commission's regulation of the holding company's utility subsidiary. Among other things, the commission said it could not carry out its normal rate-making activities for fear of triggering the holding company's bankruptcy and causing financial institutions to take control of its utility subsidiary. SEC is currently reviewing the state commission's request. By directly regulating utility holding companies' diversification activities, state commissions may be able to mitigate any potential detriment.

Mergers and Acquisitions

State utility commissions also regulate utility mergers and acquisitions. NARUC's 1990 annual report shows that nearly all state commissions require that a utility obtain the commission's prior approval to sell or purchase facilities (entire operating units) as well as to merge or consolidate such facilities. The California Public Utilities Commission, for example, requires an affirmative demonstration that a proposed merger would actually constitute a net benefit to the public. To approve a merger, the California commission must find that the proposed merger, among other things, provides both short- and long-term net benefits and does not adversely affect competition. The commission must also weigh seven criteria to determine whether the merger is in the public interest, including the merger's effects on the financial condition of the resulting company, quality of service, and its ability to effectively regulate utility operations. In addition, the NARUC report indicates that the majority of commissions require a utility to obtain the commission's approval before issuing securities or purchasing securities of other utilities.

Transactions Between Utilities and IPPs

Although FERC has jurisdiction over the wholesale rates for electric power sales from IPPS, state utility commissions can impose conditions on utilities that purchase energy from IPPS to protect consumer interests. In addition, state commissions can intervene and participate in FERC proceedings to express any concerns they may have regarding potential or alleged abuse. State commissions can also prohibit transactions between a utility and an IPP if they are affiliated.

State commissions can examine a utility's involvement in an IPP transaction and, if necessary, compel a restructuring of the transaction or limit the charges allowed to be reflected in retail rates. The extent of state jurisdiction over wholesale power purchases has been the subject of litigation; generally, some utilities have argued that because FERC has reviewed the reasonableness of a wholesale sale under the Federal Power Act, state utility commissions have no jurisdiction to review the prudence of the purchase. However, in a 1983 case, the Pennsylvania Commonwealth Court decided that, while the state commission must accept a FERC-approved wholesale rate, the state commission may review the prudence of a utility's decision to purchase a quantity of power at the FERC-approved rate. This decision became known as the Pike County doctrine.[2] Our survey shows that state commission practices are consistent with the Pike County doctrine. Forty state utility commissions indicated they have the authority to disallow utilities from passing on, through retail rates, a portion of the costs of a wholesale purchase. Twenty commissions indicated that they have already taken such action.

State utility commissions can also protect consumers from affiliate abuses by precluding IPPs from selling to affiliated utilities. Two commissions responding to our survey indicated that nonutility generators may not sell power to affiliated utilities regulated by the commission; whereas, 13 commissions said that they allow such transactions. In cases where affiliated power sales are permitted, commissions can investigate cases of potential affiliate abuse as well as develop procedures to detect such abuse. The National Regulatory Research Institute, a research facility established by NARUC, reported that nearly all of the 40 state commissions participating in its study have procedures to prevent a utility from unfairly subsidizing nonutility subsidiaries.[3] These procedures are most often exercised during rate cases.

The California Public Utilities Commission and the Michigan Public Service Commission, among others, have investigated cases of alleged abuse between utilities and affiliated nonutility generators. For example, the California commission recently examined the reasonableness of a power purchase contract between a utility and an affiliated nonutility generator. In its review, the commission found that the utility had acted imprudently in negotiating and executing the contract and ordered a

[2] Pike County Light and Power Co. v. Pennsylvania Public Utility Commission, 465 A.2d 735 (Pa. Commw. 1983).

[3] Regulating Electric Utilities with Subsidiaries, National Regulatory Research Institute, NRRI-85-16 (Jan. 1986).

disallowance. The commission also found that certain actions taken by the utility reflected a disregard for the appearance of self-dealing, providing preferential treatment to affiliates. Similarly, the Michigan commission has reviewed a power-purchase contract between a utility and an affiliated nonutility generator, among other things, and found that it did not result from arm's-length negotiations.

We contacted officials from the Louisiana, Massachusetts, Montana, Nevada, and Rhode Island State commissions because they regulate utilities currently purchasing power from IPPs that received a no-action letter from SEC. According to the respective commission officials, the utilities in Louisiana, Montana, and Nevada are not affiliated with the IPPs from which they purchase power, but the utilities in Massachusetts and Rhode Island are. Louisiana, Nevada, and Montana officials said that they have not experienced any difficulties in regulating utility transactions involving IPPs. They also said that they do not foresee any future regulatory difficulties. In comparison, Massachusetts and Rhode Island officials said that no abuses have been detected, but both expressed concern about the potential for affiliate abuse and the inability of the commissions to regulate the IPP's rates since they are under FERC's jurisdiction.

Letters From the Securities and Exchange Commission and the Federal Energy Regulatory Commission

DIVISION OF
INVESTMENT MANAGEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 19, 1992

Victor S. Rezendes
Director, Energy Issues
Resources, Community, and
Economic Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

Chairman Breeden has asked me to respond to your letter of January 29, 1992, requesting comments on the General Accounting Office's draft report to the Chairman of the House Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, entitled ELECTRICITY SUPPLY: Regulating Utility Holding Companies in a Changing Electric Industry.

We have reviewed the draft report and have no general disagreement with its contents. We note, however, several instances where numerical data may be incorrect or where the text may require, or benefit by, amendment. Our comments are detailed in the appendix to this letter.

We appreciate the opportunity to comment on the draft report. If you have any questions regarding this letter, please feel free to telephone me at (202) 272-2750 or Bill Weeden at (202) 272-7676.

Sincerely,

Marianne K. Smythe
Director

Attachment

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE GENERAL COUNSEL

FEB 25 1992

Mr. Victor S. Rezendes
Director, Energy Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

Chairman Allday has asked me to respond to your January 29, 1992 request for review and comment of a draft report entitled ELECTRICITY SUPPLY: Regulating Utility Holding Companies in a Changing Electric Industry (GAO/RCED-92-98).

We appreciate the opportunity to review the draft report and I have included the Commission Staff's comments. If you have any other questions or comments, please feel free to call.

Sincerely,

William S. Scherman
General Counsel

Major Contributors to This Report

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Related GAO Products

Energy Reports and Testimony: 1991 (GAO/RCED-92-120, Mar. 1992).

Electricity Supply: Potential Effects of Amending the Public Utility Holding Company Act (GAO/RCED-92-52, Jan. 7, 1992).

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