
SECTION VI - PUHCA

- * Utility diversification plans - Adopted November 17, 1981 in San Francisco, CA.
- * Requesting the Congress to reject legislative action which seeks to amend or repeal the Public Utility Holding Company Act of 1935 - Adopted November 16, 1983 in Detroit, MI.
- * Requesting the 99th Congress to take no legislative action to amend or repeal the Public Utility Holding Company Act of 1935 - Adopted November 28, 1984 in Los Angeles, CA.
- * Urging Congress to defeat any legislation which would amend or repeal the public Utility Holding Company Act of 1935 - Adopted November 18, 1985 in New York, NY.
- * Urging SEC Congressional Oversight Hearings prior to making substantive changes to the Public Utilities Holding Company Act - Adopted October 31, 1988 in San Francisco, CA.
- * Urging A Restructuring of the Current PUHCA Debate So As To Reflect More Properly the Profound Potential Structural Changes at Stake in the Electric and Gas Utility Industry and to Protect and Maximize the Consumer Welfare By: (1) Acknowledging the Interrelationship Between This Debate and Least Cost Utility Planning and Transmission Access and Related Issues; (2) By Analyzing the Potential For Retail Wheeling; and (3) By guarding Against Exacerbation of Self-Dealing Abuses By Preserving PUCHA Protections - Adopted November 15, 1989 in Boston, Massachusetts.
- * Affirming NASUCA's support for Federal Energy Regulatory Commission policies which require interstate pipelines to provide to local distribution companies who have historically been firm sales customers access to upstream pipeline firm transportation capacity rights and access to contract storage capacity rights - Adopted June 15, 1990 in Santa Fe, N.M.
- * Urging Congress to Strengthen Existing Consumer Protections In the Public Utility Holding Company Act and to Reject Any Changes In the Act Which Do Not Promote True Competition and Ensure Continued Consumer Protection - Adopted May 21, 1991 in Seattle, WA. (1991-4)
- * Stating Continued Opposition To Proposed Changes In The Public Utility Holding Company Act Which Would Weaken Consumer Protections, But Setting Forth Additional Consumer Safeguards Which Are Required If Such Proposed Changes Are Made - Adopted November 12, 1991 in San Antonio, Texas. (1991-17)

* **Stating Continued Opposition to Changes in the Public Utility Holding Company Act Which Would Weaken Consumer Protections, and Urging the Securities and Exchange Commission and the United States Congress Not To Repeal or Weaken the Act without First Ensuring that Public-Utility Holding Companies are Subject To (1) Effective Competition (Because Effective Competition Should Induce Efficiency, Reduce Costs and Advance the Interests of Consumers) or (2) Effective Regulation, Where Effective Competition Does Not Yet Exist or Where Competition Would Not Induce Efficiency, Reduce Costs and Advance the Interests of Consumers - Adopted on June 6, 1995 in Breckenridge, Colorado. (1995-01)**

(6/21/95)

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

UTILITY DIVERSIFICATION PLANS

WHEREAS, investor owned utilities have and will continue to pursue diversification into utility-related and/or non-regulated business ventures; and

WHEREAS, such business ventures create new patterns of business transactions between regulated and non-regulated affiliated interests; and

WHEREAS, such transactions between affiliated interests may or may not be in the utility consumer's interest; and

WHEREAS, NASUCA's members have been duly designated in their respective states as the agency for the representation of utility consumer interests before their state's public utility regulatory agency;

BE IT SO RESOLVED THAT NASUCA member states support efforts at the state level which clarify the statutory jurisdiction of the public utility regulatory agency over proposed holding company corporate structures, other types of proposed corporate diversifications, and possible divestiture or spinoff proposals by existing corporate structures; and

BE IT FURTHER RESOLVED THAT NASUCA member states support the adoption by NARUC's member utility regulatory agencies of effective regulatory rules governing transactions between utility and non-utility affiliated interests in order to more effectively protect public utility consumers.

BE IT FURTHER RESOLVED THAT NASUCA authorizes its Executive Committee to develop specific positions consistent with the terms of this Resolution on a legislative bill, regulation, or any other type of proposal that concerns the subject matter of this Resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any action under this provision.

Approved by NASUCA:

Submitted by:

San Francisco, California
Place

Alvin K. Grandys, Ph.D.
Director
Governor's Office of
Consumer Services of
Illinois

November 17, 1981
Date

1

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Requesting the Congress to reject legislative action
which seeks to amend or repeal the Public Utility
Holding Company Act of 1935

- WHEREAS, in 1935 Congress enacted the Public Utility Holding Company Act (PUHCA) with the intention of protecting the public, investors, and consumers from abuses associated with the control of electric and gas utility companies through the holding company structure;
- WHEREAS, these abuses included the over-leveraging of public utility equity to the detriment of the public utility investor and ratepayer and to the unearned (in the market place) benefit of the non-utility business.
- WHEREAS, the PUHCA directed the Securities and Exchange Commission (SEC) to reorganize these holding companies and to provide for continued surveillance of the corporate structure, financial transactions, and operational practices of public utility holding companies; to prevent the foregoing abuses.
- WHEREAS, the PUHCA restricts business transactions and acquisitions of utility holding companies to prevent potential anti-competitive effects;
- WHEREAS, the PUHCA requires that an integrated utility system be maintained with a simple corporate and financial structure in order to effectively benefit the public's interest and to serve the need for a continuing utility service system;
- WHEREAS, the PUHCA limits diversification by utility holding company systems;
- WHEREAS, such limitations are necessary and appropriate to prevent potential problems of cross subsidization, mismanagement of company resources, and the problems associated with incurring a loss in a diversified venture;
- WHEREAS, the SEC has been successful in protecting the public, investors, and consumers from many abuses because of the PUHCA;
- WHEREAS, the PUHCA can continue to be effective against the recurrence of past abuses and other potential abuses;
- WHEREAS, the General Accounting Office has identified regulatory gaps that would occur if the Act is repealed and found that some state regulatory officials believe that they are unprepared to deal with the consequences of the Act's repeal;
- WHEREAS, NASUCA has reviewed legislation and other materials pertaining to repeal, or amendment of PUHCA and has concluded that no legislative action should be taken to amend or repeal the Act;
- RECEIVED

NOV 28 1983

RESOLUTION

(Requesting the Congress to defeat legislative action on any bills which seek to amend or repeal the Public Utility Holding Company Act of 1935)
PAGE TWO

BE IT RESOLVED THAT the National Association of State Utility Consumer Advocates authorizes its Executive Committee to develop specific positions consistent with the terms of the Resolution on a legislative bill, regulation, or any other type of proposal that concerns the subject matter of this Resolution including the preparation of a policy paper reflecting NASUCA's position which shall be filed with the United States Congress. The Executive Committee shall advise the membership of any other proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any action under this provision.

Approved by NASUCA:

Submitted by:

Detroit, Michigan
Place

Resolutions Committee

Name

Address

Phone

November 16, 1983
Date

Reported out by Resolution Committee
Date: November 15, 1983

Favorable X **Not Favorably**

John K. Keane, Jr.
COMMITTEE MEMBER

William A. Spratley
COMMITTEE MEMBER

Daniel Clearfield
COMMITTEE MEMBER

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Requesting the 99th Congress to take no legislative action to amend or repeal the Public Utility Holding Company Act of 1935

- WHEREAS,** in 1935 Congress enacted the Public Utility Holding Company Act (PUHCA) with the intention of protecting the public, investors, and consumers from abuses associated with the control of electric and gas utility companies through the holding company structure;
- WHEREAS,** these abuses included the over-leveraging of public utility equity to the detriment of the public utility investor and ratepayer and to the unearned (in the market place) benefit of the non-utility business;
- WHEREAS,** the PUHCA directed the Securities and Exchange Commission (SEC) to reorganize these holding companies and to provide for continued surveillance of the corporate structure, financial transactions, and operational practices of public utility holding companies; to prevent the foregoing abuses;
- WHEREAS,** the PUHCA restricts business transactions and acquisitions of utility holding companies to prevent potential anti-competitive effects;
- WHEREAS,** the PUHCA requires that an integrated utility system be maintained with a simple corporate and financial structure in order to effectively benefit the public's interest and to serve the need for a continuing utility service system;
- WHEREAS,** the PUHCA limits diversification by utility holding company systems;
- WHEREAS,** such limitations are necessary and appropriate to prevent potential problems of cross subsidization, mismanagement of company resources, and the problems associated with incurring a loss in a diversified venture;
- WHEREAS,** the SEC has been successful in protecting the public, investors and consumers from many abuses because of the PUHCA;

RESOLUTION
(Requesting the 99th Congress to take
no legislative action to amend or repeal
the Public Utility Holding Company Act
of 1935)
PAGE TWO

WHEREAS, the PUHCA can continue to be effective against
the recurrence of past abuses and other potential
abuses;

WHEREAS, the General Accounting Office has identified
regulatory gaps what would occur if the Act is
repealed and found that some state regulatory
officials believe that they are unprepared to
deal with the consequences of the Act's repeal;

THEREFORE BE IT RESOLVED THAT the National Association of State
Utility Consumer Advocates has reviewed
legislation introduced in previous Congressional
sessions and other materials pertaining to repeal
or amendment of PUHCA and has concluded that no
legislative action should be taken to materially
amend or repeal the Act; and,

BE IT FURTHER RESOLVED THAT the National Association of State
Utility Consumer Advocates authorizes its
Executive Committee to develop specific positions
consistent with the terms of the Resolution on a
legislative bill, regulation, or any other type
of proposal that concerns the subject matter of
this Resolution including the preparation of a
policy paper reflecting NASUCA's position which
shall be filed with the United States Congress.
The Executive Committee shall advise the
membership of any other proposed action prior to
taking such action, if possible. In any event,
the Executive Committee shall notify the
membership of any action under this provision.

Approved by NASUCA:

Submitted by:

Los Angeles, CA
Place

Resolutions Committee
Name
Address
Phone

11-28-84
Date

Reported out by Resolution
Committee
Date: 11-13-84

RESOLUTION

(Requesting the 99th Congress to take
no legislative action to amend or repeal
the Public Utility Holding Company Act
of 1935)

PAGE THREE

Favorable X Not Favorable

William A. Spratley

COMMITTEE MEMBER

Denise Goulet

COMMITTEE MEMBER

Deppish Kirkland

COMMITTEE MEMBER

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Urging Congress to defeat any legislation which would amend or repeal the Public Utility Holding Company Act of 1935.

- WHEREAS, the Public Utility Holding Company Act of 1935 (PUCHA) was implemented for the purpose of preventing and correcting situations harmful to the public interest and to protect the interests of investors and consumers from abuses associated with the control of electric and gas utility companies through the holding company structure;
- WHEREAS, holding companies practices of over-leveraging public utility equity were detrimental to public utility investors and ratepayers;
- WHEREAS, the PUCHA requires that an integrated utility system be maintained with a simple corporate and financial structure, in order to effectively respond to the public need for a continuing utility service system;
- WHEREAS, limits placed on holding companies by the PUCHA are essential to prevent cross-subsidization and other negative effects detrimental to ratepayers;
- WHEREAS, diversification into non-functionally related businesses will lead to higher capital costs and ultimately to increased cost of service which will be endured by utility consumers;
- WHEREAS, the PUCHA has enabled the Securities and Exchange Commission (SEC) to protect the general public, consumers, and investors from misuse of monopoly power;
- WHEREAS, changes to the PUCHA could severely hamper the ability of the SEC to protect consumers by means of thorough regulation of securities issuances, intercompany transactions, and intrasystem transactions;
- THEREFORE BE IT RESOLVED THAT the National Association of State Utility Consumers Advocates (NAGUCA) is of the sound opinion that the PUCHA of 1935 should not be amended in any manner, nor should the Act be repealed by Congress nor should funds for enforcement be denied; and

RESOLUTION (1985-G)
PAGE TWO

BE IT FURTHER RESOLVED THAT the National Association of State Utility Consumer Advocates (NASUCA) authorizes its Executive Committee to develop specific policies consistent with the provisions of the Resolution on a legislative bill, rule, or any other proposal that concerns the PUCHA of 1935. The Executive Committee shall inform the membership of any action, before taking such action, if time permits. In any event, the Executive Committee will notify the membership of any actions taken pursuant to the Resolution.

Approved by NASUCA:

Place

Date

Submitted by:

Resolutions Committee

Name
Address
Phone

Reported out by Resolution
Committee

Date: November 18, 1985

Favorable X Not Favorable

Dan Clearfield
COMMITTEE MEMBER

Donna Sorgi
COMMITTEE MEMBER

Bill Spratley
COMMITTEE MEMBER

Dep Kirkland
COMMITTEE MEMBER

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Urging SEC Congressional oversight hearings prior to making substantive changes to the Public Utilities Holding Company Act.

- WHEREAS, Congress has begun its deliberations on proposals to amend or repeal the Public Utilities Holding Company Act (PUHCA);
- WHEREAS, this inquiry has begun without an assessment having first been made of the performance by the Securities and Exchange Commission (SEC) in carrying out its statutory duties and responsibilities;
- WHEREAS, while NASUCA recognizes that various legislative proposals reflect a perception that competition in the electric and gas areas necessitates changes in PUHCA, NASUCA also believes that PUHCA has served useful functions to prevent certain abuses in these areas;
- WHEREAS, NASUCA further believes that an appropriate starting point for Congressional deliberations would be for such an assessment to be undertaken;
- NOW THEREFORE, BE IT RESOLVED, that NASUCA strongly urges Congress to undertake this assessment before making substantive changes to PUHCA in order to have a better understanding of the purposes PUHCA currently serves, how well the SEC carries out the provisions of PUHCA, and whether changes should be made in how the SEC fulfills its responsibilities under the Act;
- BE IT FURTHER RESOLVED, that NASUCA authorizes its Executive Committee to develop specific positions consistent with the terms of this Resolution and to investigate the impact on consumers and the structure of the industry of various legislative proposals in order to develop a position on them. The Executive Committee shall advise the membership of any proposed action prior to taking such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this provision.

Approved by NASUCA:

San Francisco, California
Place

October 31, 1988
Date

Submitted by:

Electric Committee

Reported out by Electric
Committee

Date: October 10, 1988

Favorably X
Not Favorably

Committee Members:

Raymon Lark - So. Carolina
James Meehan - Conneticut
Bill Hermann - Illinois
Stephen Ward - Maine
Ted Bohlen - Massachusetts
Alan Barak/Ed Petrini - Michigan
Glenn Watts - Mississippi
Chuck Adams - Washington
Sonny Popowsky - Pennsylvania

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Urging A Restructuring Of The Current PUHCA Debate So As To Reflect More Properly The Profound Potential Structural Changes At Stake In The Electric And Gas Utility Industry And To Protect And Maximize The Consumer Welfare By:

(1) Acknowledging the Interrelationship Between This Debate And Least Cost Utility Planning And Transmission Access And Related Issues; (2) By Analyzing The Potential For Retail Wheeling; and (3) By Guarding Against Exacerbation Of Self-Dealing Abuses By Preserving PUCHA Protections;

WHEREAS, Legislation has been introduced to make significant changes in the Public Utility Holding Company Act of 1935 (PUHCA) which was originally enacted to protect and maximize the consumer welfare;

WHEREAS, S. 406 (the Johnston bill) would create a new category of electric generators called Exempt Wholesale Generators (EWGS) that would not be subject to the regulatory restrictions imposed on holding companies by PUHCA and that could be developed by utilities and non-utility electricity producers;

WHEREAS, by permitting unrestricted utility as well as non-utility, ownership of EWGs, the legislation both creates greater opportunities for self-dealing abuses at the expense of the consumer welfare and improperly restricts the scope of the debate, given the profound potential structural changes at stake in the electric and gas utility industry;

WHEREAS, these structural changes should more properly be viewed in a comprehensive framework to include:

1) least cost utility planning (LCUP), transmission access and related issues (since an EWG would be a supply-side option still important in LCUP and it would require transmission access);

2) analysis of the potential for retail wheeling (since the retail sector is the largest sector in the United States and NASUCA believes unfettered, widescale retail wheeling may not promote the consumer welfare), and

3) guarding against exacerbation of self-dealing abuses by preserving PUHCA protections (since such action would properly be consistent with the original legislative intent of PUHCA and the Federal Power Act);

NOW THEREFORE, BE IT RESOLVED, that NASUCA strongly urges Congress to restructure the current PUHCA debate so as to reflect more properly the profound potential structural changes at stake in the electric and gas utility industry and to protect and maximize the consumer welfare by acknowledging the inter-relationship between this debate and least cost utility planning, transmission access, and related issues; by analyzing the potential for retail wheeling; and by guarding against exacerbation of self-dealing abuses by preserving PUCHA protections;

BE IT FURTHER RESOLVED, that NASUCA specifically urges the Senate Committee on Energy and Natural Resources, as well as all other Congressional Committees, to demonstrate responsible leadership by restructuring the PUHCA debate as urged by NASUCA before marking up S. 406 and voting on it;

BE IT FURTHER RESOLVED, that NASUCA urges Congress not to allow its acid rain legislative debate to serve as a vehicle for substantive PUHCA changes without proper consideration of all issues under this structural approach; and

BE IT FURTHER RESOLVED, that NASUCA authorizes its Executive Committee to develop specific positions consistent with the terms of this Resolution and to provide assistance to Congress in its deliberations on these important consumer matters. The Executive Committee shall advise the membership of any proposed action prior to taking such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this provision.

Approved by NASUCA:

Boston, Massachusetts
Place

November 15, 1989
Date

Submitted and Favorably:
Reported by:

NASUCA Electric Committee

November 14, 1989
Date

Committee Members:

Raymon Lark - So. Carolina
James Meehan - Connecticut
Steve Fogel - Illinois
Jerry Oppenheim - Massachusetts
Ed Petrini - Virginia
Glenn Watts - Mississippi
Sonny Popowski - Pennsylvania
Fred Schmidt - Nevada
Luis Wilmot - D.C.
Michael Holmes - New Hampshire

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

R E S O L U T I O N

Urging the Congress to Reject Pending Proposals to Amend the Public Utility Holding Company Act of 1935 for Natural Gas Holding Companies and to Consider a Narrower Amendment.

WHEREAS, the National Association of State Utility Consumer Advocates (NASUCA) has long recognized the benefits of the Public Utilities Holding Company Act of 1935 (PUHCA) for consumers in limiting utility diversification and abuses such as cross-subsidization, anti-competitive acquisitions and shifting of risks to consumers;

WHEREAS, consumer advocates and state regulators continue to encounter abuses and potential for cross-subsidies when utility affiliates diversify into other activities;

WHEREAS, NASUCA opposes amendments to PUHCA which could weaken its consumer protection powers, which continue to be effective;

WHEREAS, S.2761 and H.R. 5224, bills pending in the U.S. Senate and House of Representatives, respectively, purport to "clarify" PUHCA with respect to natural gas holding companies to ensure that gas supply related activities of the three registered gas holding companies (registered companies) be deemed reasonably incidental to the operation of a gas utility company;

WHEREAS, the effect of deeming an activity reasonably incidental to the operation of a gas utility company which is a subsidiary of a registered company is, paradoxically, to allow the registered company to engage in such activity without regard for whether the activity primarily benefits the affiliated gas utility holding company;

WHEREAS, activities such as the transmission, storage, marketing and supply of natural gas, as well as exploration for, development and production of natural gas and manufacture of synthetic gas, are deemed "non-utility" businesses under PUHCA;

WHEREAS, the Securities and Exchange Commission (SEC) has interpreted Section 11(b)(1) of PUHCA to require that such activities by registered companies be for the primary benefit of affiliated local distribution companies;

WHEREAS, local distribution companies (LDCs) unaffiliated with registered companies can benefit consumers by diversifying their gas supplies, which may include obtaining natural gas transportation and storage services from subsidiaries of registered companies;

WHEREAS, state utility consumer advocates have urged that LDCs diversify their supplies in order to benefit consumers;

WHEREAS, natural gas transportation and storage services are regulated by the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act which requires non-discriminatory provision of such services;

WHEREAS, transportation of natural gas under the open access provisions mandated by the FERC under the Natural Gas Act enables consumers to benefit from access to competitively priced gas supplies;

WHEREAS, natural gas storage services offered by interstate pipelines, including those owned by registered companies, can benefit consumers by enabling more favorable gas purchase terms;

WHEREAS, other non-regulated businesses such as natural gas marketing, production, exploration and development and manufacture are properly regarded as non-utility businesses under PUHCA and are services readily available to LDCs from many unaffiliated competitors; moreover the FERC has recognized the potential for anticompetitive dealings with marketing companies affiliated with pipelines;

WHEREAS, the National Association of Regulatory Utility Commissioners (NARUC) has explicitly endorsed the language of S.2761 and H.R. 5224, although the expanded services claimed as benefits in the NARUC resolution were all related to transportation, storage and sales by interstate pipelines;

WHEREAS, the amendment to PUHCA sought by the registered companies and endorsed by NARUC is much broader than necessary to provide the benefits of transportation and storage by registered companies to consumers of unaffiliated LDCs;

WHEREAS, the amendment to PUHCA sought by the registered companies will negate the central concept of an integrated natural gas system and is in conflict with the intent of PUHCA;

WHEREAS, NASUCA would not oppose an amendment to PUHCA which narrowly permits the provision of transportation and/or storage services to unaffiliated natural gas utilities where it can be shown that such service will increase the efficiency of the utility to be served and will benefit that utility's consumers; that such service will result in no detriment to the registered company's consumers; where the service to be provided remains under applicable public utility regulation;

WHEREAS, NASUCA's existing positions with respect to PUHCA remain otherwise unchanged;

THEREFORE BE IT RESOLVED that NASUCA urges NARUC to reconsider its endorsement of amending PUHCA to permit diversification beyond provision of natural gas transportation and storage services as described herein.

BE IT FURTHER RESOLVED, that the National Association of State Utility Consumer Advocates authorizes its Executive Committee to develop specific positions consistent with the terms of the Resolution on legislation, regulations or any other type of proposal that concerns the subject matter of this Resolution, including the development of any policy papers reflecting NASUCA's position. The Executive Committee shall advise the membership of any proposed action prior to taking action, if possible. In any event, the Executive Committee shall notify the membership of any action under this provision;

Approved by NASUCA:

By mailed ballot vote pursuant
to Article VII, Section 8, of
the Bylaws

August 28, 1990

Submitted and Favorably Reported by:

NASUCA Gas Committee

August 8, 1990

Committee members:

Margaret Ann Samuels (OH), Chairman

Craig Burgraff (PA)

Paul Buckley (MD)

Rafael Epstein (NY)

Byron Harris (WV)

Joseph Ingles (UT)

Bill Kowalski

Sandra Mattavous-Frye (DC)

Carl McIntosh (SC)

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

R E S O L U T I O N

**Urging Congress To Strengthen Existing Consumer Protections
In The Public Utility Holding Company Act And To Reject Any
Changes In The Act Which Do Not Promote True Competition
And Ensure Continued Consumer Protection**

- WHEREAS, The Public Utility Holding Company Act of 1935 (PUHCA) was originally enacted to protect the welfare of utility consumers and investors and to enable state utility commissions to regulate the activities of electric and gas utilities effectively; and
- WHEREAS, PUHCA has provided essential safeguards to utility ratepayers by prohibiting or restricting certain activities and corporate structures for utilities (and "would-be" utilities) which may be harmful to consumers and to the public interest; and
- WHEREAS, PUHCA has been instrumental in preventing certain forms of self-dealing and cross-subsidies by electric utilities, as well as the use of certain types of complex corporate and financial structures which had made the regulation of public utilities by state commissions extremely difficult at best and impossible at worst; and
- WHEREAS, PUHCA has protected consumers from other forms of monopoly power and abuse, while also protecting utility investors through regulation of securities issuances and other financial and corporate transactions and structures; and
- WHEREAS, Despite the restrictions of PUHCA, a number of utility companies have placed themselves (and potentially their ratepayers) at risk through diversification into unregulated businesses and through expansion into utility-related activities by such means as highly leveraged subsidiaries, affiliates, limited partnerships, and divisions which do not appear to be directly prohibited by the Act or which are allegedly exempted from the Act under the terms of the Public Utility Regulatory Policies Act (PURPA); and

- WHEREAS, Existing utility-affiliate relationships currently permitted by PUHCA and PURPA, as interpreted by the Securities and Exchange Commission and the Federal Energy Regulatory Commission, have given rise to many of the abuses that were intended to be prevented by PUHCA; and
- WHEREAS, A number of proposals have been made in Congress to severely reduce or eliminate many of the consumer protections contained in PUHCA, particularly with respect to the establishment of wholesale electric generating projects by both monopoly utilities and independent power producers which would be exempt from all provisions of PUHCA; and
- WHEREAS, Congress should seek ways to eliminate existing abuses under PUHCA before taking any steps to remove any remaining restrictions which are contained in the Act; and
- WHEREAS, Any modifications to the Act must distinguish between affiliates of monopoly utilities and truly independent power producers; and
- WHEREAS, The dangers of self-dealing, cross-subsidy, and unfair competition resulting from the creation of exempt wholesale generators by monopoly utilities or their affiliates greatly outweigh any speculative benefits to consumers that could result from the creation of such entities; and
- WHEREAS, The dangers resulting from the creation of exempt wholesale generators by utilities or their affiliates would be exacerbated by the utilities' continued monopoly control over essential transmission facilities and their ability to use that control to prevent meaningful competition; and
- WHEREAS, The only modification to the Act which is arguably necessary in order for individual independent power producers to compete to provide electric power generation on a national level is the limited amendment of the "integration" requirement in Section 10(c)(2) of the Act; and
- WHEREAS, Each state commission which regulates the rates of any utility must retain full authority under state law to review the prudence and reasonableness of any power transaction between a utility and an exempt wholesale generator and to disallow the costs of such transaction to the extent such costs are not found to be just and reasonable by the state commission.

THEREFORE, BE IT RESOLVED that if any amendments are to be considered to the Public Utility Holding Company Act, NASUCA urges Congress to 1) strengthen PUHCA to eliminate existing loopholes which enable utilities to commit some of the monopoly abuses that PUHCA was intended to prevent; 2) prohibit the creation of exempt wholesale generators by monopoly utilities or their affiliates; 3) limit any modification designed to increase competition by truly independent power producers to amendment of the integration requirement of Section 10(c)(2) of the Act; and 4) require that state commissions must retain full authority to review the prudence and reasonableness of all transactions which a regulated utility may make with any exempt wholesale generator.

BE IT FURTHER RESOLVED that NASUCA authorizes the Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:

Seattle, WA
Place

May 21, 1991
Date

Submitted by:

NASUCA Electric Committee

Committee Members:

Irwin Popowsky (PA) Chairman
Larry Frimerman (OH)
Al Grandys (IL)
Billy Jack Gregg (WV)
Leland Hogan (UT)
Ray Lark (SC)
Lewis Mills (MO)
Paul Novak (MI)
Ed Petrini (VA)
Bill Riggins (KS)
Fred Schmidt (NV)

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

R E S O L U T I O N

**Stating Continued Opposition To Proposed Changes In The
Public Utility Holding Company Act Which Would Weaken Consumer
Protections, But Setting Forth Additional Consumer Safeguards
Which Are Required If Such Proposed Changes Are Made**

- WHEREAS, The National Association of State Utility Consumer Advocates (NASUCA) has consistently stated its opposition to changes in the Public Utility Holding Company Act (PUHCA) which would weaken consumer protections contained in that Act;
- WHEREAS, NASUCA is particularly opposed to efforts to amend PUHCA to allow regulated electric utilities to create affiliated wholesale generating companies which would be exempt from PUHCA requirements;
- WHEREAS, the United States Congress is presently considering a number of legislative proposals which would permit utilities to establish PUHCA exempt wholesale generators;
- WHEREAS, NASUCA believes that allowing the creation of such utility affiliates will inevitably lead to abuses such as self-dealing, cross-subsidization, and anti-competitive practices which will be impossible for state and federal regulators to prevent;
- WHEREAS, while NASUCA continues to strenuously oppose any PUHCA amendments which permit the creation of exempt wholesale generators by utility affiliates, NASUCA recognizes that the present legislation before Congress would exacerbate the problems created by such exemptions even further because of the failure of such legislation to establish any countervailing consumer protections;
- WHEREAS, while NASUCA opposes any PUHCA amendments which permit the creation of exempt wholesale generators by utility affiliates, NASUCA submits that, if Congress nevertheless determines to permit such exemptions, additional safeguards, which should include but not be limited to the following, must be added:

- 1) Exemptions should be established on a case-by-case, provision-by-provision basis for individual power sales and must be subject to review by state regulators;
- 2) Power sales and all other transactions (except payments of dividends) between a utility and its affiliate must be absolutely barred;
- 3) Cross-subsidies and direct or indirect preferences between a utility and its affiliate must be prohibited, and affected federal and state regulatory commissions must have the authority and access to all corporate books and records necessary to enforce such prohibitions;
- 4) State authority to review the prudence and reasonableness of wholesale transactions for the purpose of setting retail rates may only be preempted, if at all, with respect to transactions involving FERC-mandated allocations of power among members of a multi-state holding company which operate on an integrated basis;
- 5) Utilities must be prevented from using monopoly transmission facilities to engage in anti-competitive activities, such as granting transmission access on favorable terms to their own affiliates while discriminatorily denying access to non-affiliated power producers.

THEREFORE, BE IT RESOLVED that NASUCA continues to oppose efforts to amend PUHCA to allow regulated electric utilities to create affiliated exempt wholesale generators, but that if Congress nevertheless determines to permit such exemptions, NASUCA submits that the additional protections set forth above must be included in any such legislation;

BE IT FURTHER RESOLVED that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:

San Antonio, Texas
Place

November 12, 1991
Date

Submitted by:

NASUCA Electric Committee

Committee Members:
Irwin Popowsky (PA) Chair
Larry Frimerman (OH)
Billy Jack Gregg (WV)
Leland Hogan (UT)
Raymon Lark (SC)
Lewis Mills (MO)
Paul Novak (MI)
Edward Petrini (VA)
Fred Schmidt (NV)

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

R E S O L U T I O N

**Stating Continued Opposition to Changes in the
Public Utility Holding Company Act which Would Weaken
Consumer Protections, and Urging the Securities and Exchange Commission
and the United States Congress not to Repeal or Weaken the Act
without First Ensuring that Public Utility Holding Companies are
Subject to (1) Effective Competition (Because Effective Competition
Should Induce Efficiency, Reduce Costs and Advance the Interests of Consumers
or (2) Effective Regulation, Where Effective Competition Does Not Yet Exist or Where
Competition Would Not Induce Efficiency, Reduce Costs
and Advance the Interests of Consumers**

WHEREAS, the National Association of State Utility Consumer Advocates (NASUCA) has consistently stated its opposition to changes in the Public Utility Holding Company Act (PUHCA) that would weaken consumer protections in that Act; and

WHEREAS, public utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, their activities extending over many States are not susceptible to effective control by any State; and

WHEREAS, neither the natural gas industry nor the electric industry currently has a fully competitive market structure and utility market power remains pervasive; and

WHEREAS, were PUHCA to be repealed today, neither the remaining regulatory scheme nor the current state of competition would be sufficient to protect consumers; and

WHEREAS, while effective competition benefits consumers, deregulation under conditions of unfettered market power harms consumers; and

WHEREAS, until utility market power is eliminated, consumers must be protected from its exercise through effective regulation; and

WHEREAS, weakening the consumer protections in PUHCA is inappropriate without first ensuring effective competition or effective regulation in those sectors where each (or both) is appropriate; and

WHEREAS, effective regulation of multi-state public utility holding companies requires both rate reviews and structural reviews, with a rational allocation of responsibility between the state and federal decision-makers;

THEREFORE, BE IT RESOLVED that NASUCA urges the Securities and Exchange Commission and the United States Congress not to repeal or weaken the consumer protections in PUHCA without first ensuring that public utility holding companies are subject to (1) effective competition (because effective competition should induce efficiency, reduce costs and advance the interests of consumers) or (2) effective regulation, where effective competition does not exist yet or where competition would not induce efficiency, reduce costs and advance the interest of consumers;

BE IT FURTHER RESOLVED that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to such action if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:

Breckenridge, Colorado
Place

June 6, 1995
Chair

Submitted by:

NASUCA Electricity Committee

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