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Title 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 149 - NATIONAL ENERGY POLICY AND PROGRAMS

SUBCHAPTER XII - ELECTRICITY

Part D - Repeal of Public Utility Holding Company Act of 1935

From the U.S. Government Publishing Office, www.gpo.gov**PART D—REPEAL OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935****§16451. Definitions**

For purposes of this part:

(1) Affiliate

The term "affiliate" of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) Associate company

The term "associate company" of a company means any company in the same holding company system with such company.

(3) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(4) Company

The term "company" means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) Electric utility company

The term "electric utility company" means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) Exempt wholesale generator and foreign utility company

The terms "exempt wholesale generator" and "foreign utility company" have the same meanings as in sections 79z-5a and 79z-5b of title 15, as those sections existed on the day before the effective date of this part.

(7) Gas utility company

The term "gas utility company" means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) Holding company**(A) In general**

The term "holding company" means—

- (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this part upon holding companies.

(B) Exclusions

The term "holding company" shall not include—

(i) a bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(I) held as collateral for a loan;

(II) held in the ordinary course of business as a fiduciary; or

(III) acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) a broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(I) not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(II) acquired within 12 months in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution of the specific securities so acquired.

(9) Holding company system

The term "holding company system" means a holding company, together with its subsidiary companies.

(10) Jurisdictional rates

The term "jurisdictional rates" means rates accepted or established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) Natural gas company

The term "natural gas company" means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) Person

The term "person" means an individual or company.

(13) Public utility

The term "public utility" means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) Public-utility company

The term "public-utility company" means an electric utility company or a gas utility company.

(15) State commission

The term "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) Subsidiary company

The term "subsidiary company" of a holding company means—

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

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this part upon subsidiary companies of holding companies.

(17) Voting security

The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

(Pub. L. 109–58, title XII, §1262, Aug. 8, 2005, 119 Stat. 972.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under this section and section 15801 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

For the effective date of this part, referred to in par. (6), see Effective Date note set out below.

EFFECTIVE DATE

Pub. L. 109–58, title XII, §1274, Aug. 8, 2005, 119 Stat. 977, provided that:

"(a) IN GENERAL.—Except for section 1272 [42 U.S.C. 16460] (relating to implementation), this subtitle [subtitle F (§§1261 to 1277) of title XII of Pub. L. 109–58, enacting this part, amending sections 824 and 824m of Title 16, Conservation, repealing chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacting provisions set out as a note under section 15801 of this title] shall take effect 6 months after the date of enactment of this subtitle [Aug. 8, 2005].

"(b) COMPLIANCE WITH CERTAIN RULES.—If the [Federal Energy Regulatory] Commission approves and makes effective any final rulemaking modifying the standards of conduct governing entities that own, operate, or control facilities for transmission of electricity in interstate commerce or transportation of natural gas in interstate commerce prior to the effective date of this subtitle, any action taken by a public-utility company or utility holding company to comply with the requirements of such rulemaking shall not subject such public-utility company or utility holding company to any regulatory requirement applicable to a holding company under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.)."

SHORT TITLE

For short title of subtitle F of title XII of Pub. L. 109–58, which enacted this part, as the "Public Utility Holding Company Act of 2005", see section 1261 of Pub. L. 109–58, set out as a note under section 15801 of this title.

§16452. Federal access to books and records**(a) In general**

Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that

is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Affiliate companies

Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) Holding company systems

The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) Confidentiality

No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

(Pub. L. 109-58, title XII, §1264, Aug. 8, 2005, 119 Stat. 974.)

§16453. State access to books and records

(a) In general

Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public-utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

- (1) have been identified in reasonable detail in a proceeding before the State commission;
- (2) the State commission determines are relevant to costs incurred by such public-utility company; and
- (3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) Limitation

Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(c) Confidentiality of information

The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) Effect on State law

Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, and other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, and other records under any other Federal law, contract, or otherwise.

(e) Court jurisdiction

Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

(Pub. L. 109–58, title XII, §1265, Aug. 8, 2005, 119 Stat. 975.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (b), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§16454. Exemption authority**(a) Rulemaking**

Not later than 90 days after the effective date of this part, the Commission shall issue a final rule to exempt from the requirements of section 16452 of this title (relating to Federal access to books and records) any person that is a holding company, solely with respect to one or more—

- (1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);
- (2) exempt wholesale generators; or
- (3) foreign utility companies.

(b) Other authority

The Commission shall exempt a person or transaction from the requirements of section 16452 of this title (relating to Federal access to books and records) if, upon application or upon the motion of the Commission—

- (1) the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or
- (2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(Pub. L. 109–58, title XII, §1266, Aug. 8, 2005, 119 Stat. 975.)

REFERENCES IN TEXT

For the effective date of this part, referred to in subsec. (a), see Effective Date note set out under section 16451 of this title.

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a)(1), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§16455. Affiliate transactions**(a) Commission authority unaffected**

Nothing in this part shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the issuance of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) Recovery of costs

Nothing in this part shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an

associate company, or any costs of goods or services acquired by such public-utility company from an associate company.

(Pub. L. 109–58, title XII, §1267, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Federal Power Act, referred to in subsec. (a), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

§16456. Applicability

Except as otherwise specifically provided in this part, no provision of this part shall apply to, or be deemed to include—

- (1) the United States;
- (2) a State or any political subdivision of a State;
- (3) any foreign governmental authority not operating in the United States;
- (4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or
- (5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), (3), or (4) acting as such in the course of his or her official duty.

(Pub. L. 109–58, title XII, §1268, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§16457. Effect on other regulations

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

(Pub. L. 109–58, title XII, §1269, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§16458. Enforcement

The Commission shall have the same powers as set forth in sections 825e through 825p of title 16 to enforce the provisions of this part.

(Pub. L. 109–58, title XII, §1270, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§16459. Savings provisions

(a) In general

Nothing in this part, or otherwise in the Public Utility Holding Company Act of 1935, or rules, regulations, or orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on August 8, 2005, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization, whether by rule or by order.

(b) Effect on other Commission authority

Nothing in this part limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

(c) Tax treatment

Tax treatment under section 1081¹ of title 26 as a result of transactions ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) shall not be affected in any manner due to the repeal of that Act and the enactment of the Public Utility Holding Company Act of 2005 [42 U.S.C. 16451 et seq.].

(Pub. L. 109–58, title XII, §1271, Aug. 8, 2005, 119 Stat. 976.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, known as the Public Utility Holding Company Act of 2005, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsecs. (a) and (c), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

The Federal Power Act, referred to in subsec. (b), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Section 1081 of title 26, referred to in subsec. (c), was repealed by Pub. L. 109–135, title IV, §402(a)(1), Dec. 21, 2005, 119 Stat. 2610.

The Public Utility Holding Company Act of 2005, referred to in subsec. (c), is subtitle F (§§1261–1277) of title XII of Pub. L. 109–58. See note for this part above.

¹ See References in Text note below.

§16460. Implementation

Not later than 4 months after August 8, 2005, the Commission shall—

- (1) issue such regulations as may be necessary or appropriate to implement this part (other than section 16453 of this title, relating to State access to books and records); and
- (2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this part and the amendments made by this part.

(Pub. L. 109–58, title XII, §1272, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§16461. Transfer of resources

All books and records that relate primarily to the functions transferred to the Commission under this part shall be transferred from the Securities and Exchange Commission to the Commission.

(Pub. L. 109–58, title XII, §1273, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.

§16462. Service allocation

(a) Definition of public utility

In this section, the term "public utility" has the meaning given the term in section 824(e) of title 16.

(b) FERC review

In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this part, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company.

(c) Effect on Federal and State law

Nothing in this section shall affect the authority of the Commission or a State commission under other applicable law.

(d) Rules

Not later than 4 months after August 8, 2005, the Commission shall issue rules (which rules shall be effective no earlier than the effective date of this part) to exempt from the requirements of this section any company in a holding company system whose public utility operations are confined substantially to a single State and any other class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility.

(Pub. L. 109–58, title XII, §1275, Aug. 8, 2005, 119 Stat. 977.)

REFERENCES IN TEXT

For the effective date of this part, referred to in subsecs. (b) and (d), see Effective Date note set out under section 16451 of this title.

§16463. Authorization of appropriations

There are authorized to be appropriated such funds as may be necessary to carry out this part.

(Pub. L. 109–58, title XII, §1276, Aug. 8, 2005, 119 Stat. 978.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle", meaning subtitle F (§§1261–1277) of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which enacted this part, amended sections 824 and 824m of Title 16, Conservation, repealed chapter 2C (§79 et seq.) of Title 15, Commerce and Trade, and section 825q of Title 16, and enacted provisions set out as notes under sections 15801 and 16451 of this title. For complete classification of subtitle F to the Code, see Short Title note set out under section 15801 of this title and Tables.