

107TH CONGRESS
2^D SESSION

H. R. 5614

To prohibit fraudulent, manipulative, or deceptive acts in electric and natural gas markets, to provide for audit trails and transparency in those markets, to increase penalties for illegal acts under the Federal Power Act and Natural Gas Act, to reexamine certain exemptions under the Federal Power Act and the Public Utility Holding Company Act of 1935, to expand the authority of the Federal Energy Regulatory Commission to order refunds of unjust and discriminatory rates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2002

Mr. DINGELL (for himself, Mr. WAXMAN, Mr. MARKEY, Mr. BOUCHER, Mr. BROWN of Ohio, Mr. GORDON, Mr. RUSH, Mr. HONDA, Ms. NORTON, Mr. INSLEE, Ms. DELAURO, and Ms. KILPATRICK) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit fraudulent, manipulative, or deceptive acts in electric and natural gas markets, to provide for audit trails and transparency in those markets, to increase penalties for illegal acts under the Federal Power Act and Natural Gas Act, to reexamine certain exemptions under the Federal Power Act and the Public Utility Holding Company Act of 1935, to expand the authority of the Federal Energy Regulatory Commission to order refunds of unjust and discriminatory rates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Markets Fraud
5 Prevention and Consumer Protection Act of 2002”.

6 **SEC. 2. FRAUDULENT OR MANIPULATIVE PRACTICES.**

7 (a) UNLAWFUL ACTS.—It shall be unlawful for any
8 entity, directly or indirectly, by the use of any means or
9 instrumentality of interstate commerce or of the mails to
10 use or employ, in the transmission of electric energy in
11 interstate commerce, the sale of electric energy at whole-
12 sale in interstate commerce, the transportation of natural
13 gas in interstate commerce, or the sale in interstate com-
14 merce of natural gas for resale for ultimate public con-
15 sumption for domestic, commercial, industrial, or any
16 other use, any fraudulent, manipulative, or deceptive de-
17 vice or contrivance in contravention of such rules and reg-
18 ulations as the Federal Energy Regulatory Commission
19 may prescribe as necessary or appropriate in the public
20 interest.

21 (b) APPLICATION OF FEDERAL POWER ACT TO THIS
22 ACT.—The provisions of section 307 through 309 and 313
23 through 317 of the Federal Power Act shall apply to viola-
24 tions of section 101 of this Act in the same manner and

1 to the same extent as such provisions apply to entities sub-
2 ject to Part II of the Federal Power Act.

3 **SEC. 3. RULEMAKING ON EXEMPTIONS, WAIVERS, ETC.**
4 **UNDER FEDERAL POWER ACT.**

5 Part III of the Federal Power Act is amended by in-
6 serting the following new section after section 319 and by
7 redesignating sections 320 and 321 as sections 321 and
8 322, respectively:

9 **“SEC. 320. CRITERIA FOR CERTAIN EXEMPTIONS, WAIVERS,**
10 **ETC.**

11 “(a) **RULE REQUIRED FOR CERTAIN WAIVERS, EX-**
12 **EMPTIONS, ETC.—** Not later than 6 months after the en-
13 actment of this Act, the Commission shall promulgate a
14 rule establishing specific criteria for providing an exemp-
15 tion, waiver, or other reduced or abbreviated form of com-
16 pliance with the requirements of sections 204, 301, 304,
17 and 305 (including any prospective blanket order). Such
18 criteria shall be sufficient to insure that any such action
19 taken by the Commission will be consistent with the pur-
20 poses of such requirements and will otherwise protect the
21 public interest.

22 “(b) **MORATORIUM ON CERTAIN WAIVERS, EXEMP-**
23 **TIONS, ETC.—**After the date of enactment of this section,
24 the Commission may not issue, adopt, order, approve, or
25 promulgate any exemption, waiver, or other reduced or ab-

1 breviated form of compliance with the requirements of sec-
2 tion 204, 301, 304, or 305 (including any prospective
3 blanket order) until after the rule promulgated under sub-
4 section (a) has taken effect.

5 “(c) PREVIOUS FERC ACTION.—The Commission
6 shall undertake a review, by rule or order, of each exemp-
7 tion, waiver, or other reduced or abbreviated form of com-
8 pliance described in subsection (a) that was taken before
9 the date of enactment of this section. No such action may
10 continue in force and effect after the date 18 months after
11 the date of enactment of this section unless the Commis-
12 sion finds that such action complies with the rule under
13 subsection (a).

14 “(d) EXEMPTION UNDER 204(f) NOT APPLICA-
15 BLE.—For purposes of this section, in applying section
16 204, the provisions of section 204(f) shall not apply.”.

17 **SEC. 4. REPORTING REQUIREMENTS IN ELECTRIC POWER**
18 **SALES AND TRANSMISSION.**

19 (a) AUDIT TRAILS.—Section 304 of the Federal
20 Power Act is amended by adding the following new sub-
21 section at the end thereof:

22 “(c)(1) The Commission shall, by rule or order, re-
23 quire each person or other entity engaged in the trans-
24 mission of electric energy in interstate commerce or the
25 sale of electric energy at wholesale in interstate commerce,

1 and each broker, dealer, and power marketer involved in
2 any such transmission or sale, to maintain, and periodi-
3 cally submit to the Commission, such records, in electronic
4 form, of each transaction relating to such transmission or
5 sale as may be necessary to determine whether any person
6 has employed any fraudulent, manipulative, or deceptive
7 device or contrivance in contravention of rules promul-
8 gated by the Commission.

9 “(2) Section 201(f) shall not limit the application of
10 this subsection.”.

11 (b) NATURAL GAS.—Section 8 of the Natural Gas
12 Act is amended by adding the following new subsection
13 at the end thereof:

14 “(d) The Commission shall, by rule or order, require
15 each person or other entity engaged in the transportation
16 of natural gas in interstate commerce, or the sale in inter-
17 state commerce of natural gas for resale for ultimate pub-
18 lic consumption for domestic, commercial, industrial, or
19 any other use, and each broker, dealer, and power mar-
20 keter involved in any such transportation or sale, to main-
21 tain, and periodically submit to the Commission, such
22 records, in electronic form, of each transaction relating to
23 such transmission or sale as may be necessary to deter-
24 mine whether any person has employed any fraudulent,

1 manipulative, or deceptive device or contrivance in con-
2 travention of rules promulgated by the Commission.”.

3 **SEC. 5. TRANSPARENCY.**

4 (a) DEFINITION.—As used in this section the term
5 “electric power or natural gas information processor”
6 means any person engaged in the business of—

7 (1) collecting, processing, or preparing for dis-
8 tribution or publication, or assisting, participating
9 in, or coordinating the distribution or publication of,
10 information with respect to transactions in or
11 quotations involving the purchase or sale of electric
12 power, natural gas, the transmission of electric en-
13 ergy, or the transportation of natural gas, or

14 (2) distributing or publishing (whether by
15 means of a ticker tape, a communications network,
16 a terminal display device, or otherwise) on a current
17 and continuing basis, information with respect to
18 such transactions or quotations.

19 The term does not include any bona fide newspaper, news
20 magazine, or business or financial publication of general
21 and regular circulation, any self-regulatory organization,
22 any bank, broker, dealer, building and loan, savings and
23 loan, or homestead association, or cooperative bank, if
24 such bank, broker, dealer, association, or cooperative bank
25 would be deemed to be an electric power or natural gas

1 information processor solely by reason of functions per-
2 formed by such institutions as part of customary banking,
3 brokerage, dealing, association, or cooperative bank activi-
4 ties, or any common carrier, as defined in section 3 of
5 the Communications Act of 1934, subject to the jurisdic-
6 tion of the Federal Communications Commission or a
7 State commission, as defined in section 3 of that Act, un-
8 less the Commission determines that such carrier is en-
9 gaged in the business of collecting, processing, or pre-
10 paring for distribution or publication, information with re-
11 spect to transactions in or quotations involving the pur-
12 chase or sale of electric power, natural gas, the trans-
13 mission of electric energy, or the transportation of natural
14 gas.

15 (b) PROHIBITION.—No electric power or natural gas
16 information processor may make use of the mails or any
17 means or instrumentality of interstate commerce—

18 (1) to collect, process, distribute, publish, or
19 prepare for distribution or publication any informa-
20 tion with respect to quotations for, or transactions
21 involving the purchase or sale of electric power, nat-
22 ural gas, the transmission of electric energy, or the
23 transportation of natural gas, or

24 (2) to assist, participate in, or coordinate the
25 distribution or publication of such information in

1 contravention of such rules and regulations as the
2 Federal Energy Regulatory Commission shall pre-
3 scribe as necessary or appropriate in the public in-
4 terest to

5 (A) prevent the use, distribution, or publication
6 of fraudulent, deceptive, or manipulative information
7 with respect to quotations for and transactions in-
8 volving the purchase or sale of electric power, nat-
9 ural gas, the transmission of electric energy, or the
10 transportation of natural gas;

11 (B) assure the prompt, accurate, reliable, and
12 fair collection, processing, distribution, and publica-
13 tion of information with respect to quotations for
14 and transactions involving the purchase or sale of
15 electric power, natural gas, the transmission of elec-
16 tric energy, or the transportation of natural gas, and
17 the fairness and usefulness of the form and content
18 of such information;

19 (C) assure that all such information processors
20 may, for purposes of distribution and publication,
21 obtain on fair and reasonable terms such informa-
22 tion with respect to quotations for and transactions
23 involving the purchase or sale of electric power, nat-
24 ural gas, the transmission of electric energy, or the
25 transportation of natural gas as is collected, proc-

1 essed, or prepared for distribution or publication by
2 any exclusive processor of such information acting in
3 such capacity;

4 (D) assure that, subject to such limitations as
5 the Commission, by rule, may impose as necessary
6 or appropriate for the maintenance of fair and or-
7 derly markets, all persons may obtain on terms
8 which are not unreasonably discriminatory such in-
9 formation with respect to quotations for and trans-
10 actions involving the purchase or sale of electric
11 power, natural gas, the transmission of electric en-
12 ergy, or the transportation of natural gas as is pub-
13 lished or distributed by any electric power or natural
14 gas information processor;

15 (E) assure that all electricity and natural gas
16 electronic communication networks transmit and di-
17 rect orders for the purchase and sale of electricity or
18 natural gas in a manner consistent with the estab-
19 lishment and operation of an efficient, fair, and or-
20 derly market system for electricity and natural gas;
21 and

22 (F) assure equal regulation of all markets in-
23 volving the purchase or sale of electric power, nat-
24 ural gas, the transmission of electric energy, or the
25 transportation of natural gas and all persons effect-

1 ing transactions involving the purchase or sale of
2 electric power, natural gas, the transmission of elec-
3 tric energy, or the transportation of natural gas.

4 (c) RELATED COMMODITIES.—For purposes of this
5 section, the phrase “purchase or sale of electric power,
6 natural gas, the transmission of electric energy, or the
7 transportation of natural gas” includes the purchase or
8 sale of any commodity (as defined in the Commodities Ex-
9 change Act) relating to any such purchase or sale if such
10 commodity is excluded from regulation under the Com-
11 modities Exchange Act pursuant to section 2 of that Act.

12 (d) PROHIBITION.—No person who owns, controls, or
13 is under the control or ownership of a public utility, a nat-
14 ural gas company, or a public utility holding company may
15 own, control, or operate any electronic computer network
16 or other multilateral trading facility utilized to trade elec-
17 tricity or natural gas.

18 **SEC. 6. PENALTIES.**

19 (a) CRIMINAL PENALTIES.—Section 316 of the Fed-
20 eral Power Act (16 U.S.C. 825o(e)) is amended as follows:

21 (1) By striking “\$5,000” in subsection (a) and
22 inserting “\$5,000,000 for an individual and
23 \$25,000,000 for any other defendant”

24 (2) By striking “\$500” in subsection (b) and
25 inserting “\$1,000,000”.

1 (2) By striking subsection (c).

2 (b) CIVIL PENALTIES.—Section 316A of the Federal
3 Power Act (16 U.S.C. 8250–1) is amended as follows:

4 (1) By striking “section 211, 212, 213, or 214”
5 each place it appears and inserting “Part II”.

6 (2) By striking “\$10,000 for each day that
7 such violation continues” and inserting “the greater
8 of \$1,000,000 or three times the profit made or gain
9 or loss avoided by reason of such violation”.

10 (3) By adding the following at the end thereof:

11 “(c) AUTHORITY OF A COURT TO PROHIBIT PER-
12 SONS FROM CERTAIN ACTIVITIES.—In any proceeding
13 under this section, the court may censure, place limita-
14 tions on the activities, functions, or operations of, suspend
15 or revoke the ability of any entity (without regard to sec-
16 tion 201(f)) to participate in the transmission of electric
17 energy in interstate commerce or the sale of electric en-
18 ergy at wholesale in interstate commerce if it finds that
19 such censure, placing of limitations, suspension, or revoca-
20 tion is in the public interest and that one or more of the
21 following applies to such entity:

22 “(1) Such entity has willfully made or caused to
23 be made in any application or report required to be
24 filed with the Commission or with any other appro-
25 priate regulatory agency, or in any proceeding before

1 the Commission, any statement which was at the
2 time and in the light of the circumstances under
3 which it was made false or misleading with respect
4 to any material fact, or has omitted to state in any
5 such application or report any material fact which is
6 required to be stated therein.

7 “(2) Such entity has been convicted of any fel-
8 ony or misdemeanor or of a substantially equivalent
9 crime by a foreign court of competent jurisdiction
10 which the court finds—

11 “(A) involves the purchase or sale of elec-
12 tricity, the taking of a false oath, the making
13 of a false report, bribery, perjury, burglary, any
14 substantially equivalent activity however de-
15 nominated by the laws of the relevant foreign
16 government, or conspiracy to commit any such
17 offense;

18 “(B) arises out of the conduct of the busi-
19 ness of transmitting electric energy in interstate
20 commerce or selling or purchasing electric en-
21 ergy at wholesale in interstate commerce;

22 “(C) involves the larceny, theft, robbery,
23 extortion, forgery, counterfeiting, fraudulent
24 concealment, embezzlement, fraudulent conver-
25 sion, or misappropriation of funds, or securities,

1 or substantially equivalent activity however de-
2 nominated by the laws of the relevant foreign
3 government; or

4 “(D) involves the violation of section 152,
5 1341, 1342, or 1343 or chapter 25 or 47 of
6 title 18, United States Code, or a violation of
7 a substantially equivalent foreign statute.

8 “(3) Such entity is permanently or temporarily
9 enjoined by order, judgment, or decree of any court
10 of competent jurisdiction from acting as an invest-
11 ment adviser, underwriter, broker, dealer, municipal
12 securities dealer, government securities broker, gov-
13 ernment securities dealer, transfer agent, foreign
14 person performing a function substantially equiva-
15 lent to any of the above, or entity or person required
16 to be registered under the Commodity Exchange Act
17 or any substantially equivalent foreign statute or
18 regulation, or as an affiliated person or employee of
19 any investment company, bank, insurance company,
20 foreign entity substantially equivalent to any of the
21 above, or entity or person required to be registered
22 under the Commodity Exchange Act or any substan-
23 tially equivalent foreign statute or regulation, or
24 from engaging in or continuing any conduct or prac-

1 tice in connection with any such activity, or in con-
2 nection with the purchase or sale of any security.

3 “(4) Such entity has willfully violated any pro-
4 vision of this Act.

5 “(5) Such entity has willfully aided, abetted,
6 counseled, commanded, induced, or procured the vio-
7 lation by any other person of any provision of this
8 Act, or has failed reasonably to supervise, with a
9 view to preventing violations of the provisions of this
10 Act, another person who commits such a violation,
11 if such other person is subject to his supervision.
12 For the purposes of this paragraph no person shall
13 be deemed to have failed reasonably to supervise any
14 other person, if—

15 “(A) there have been established proce-
16 dures, and a system for applying such proce-
17 dures, which would reasonably be expected to
18 prevent and detect, insofar as practicable, any
19 such violation by such other person, and

20 “(B) such person has reasonably dis-
21 charged the duties and obligations incumbent
22 upon him by reason of such procedures and sys-
23 tem without reasonable cause to believe that
24 such procedures and system were not being
25 complied with.

1 “(6) Such entity has been found by a foreign fi-
2 nancial or energy regulatory authority to have—

3 “(A) made or caused to be made in any
4 application or report required to be filed with a
5 foreign regulatory authority, or in any pro-
6 ceeding before a foreign financial or energy reg-
7 ulatory authority, any statement that was at
8 the time and in the light of the circumstances
9 under which it was made false or misleading
10 with respect to any material fact, or has omit-
11 ted to state in any application or report to the
12 foreign regulatory authority any material fact
13 that is required to be stated therein;

14 “(B) violated any foreign statute or regula-
15 tion regarding the transmission or sale of elec-
16 tricity or natural gas;

17 “(C) aided, abetted, counseled, com-
18 manded, induced, or procured the violation by
19 any person of any provision of any statutory
20 provisions enacted by a foreign government, or
21 rules or regulations thereunder, empowering a
22 foreign regulatory authority regarding trans-
23 actions in electricity or natural gas, or con-
24 tracts of sale of electricity or natural gas, trad-
25 ed on or subject to the rules of a contract mar-

1 ket or any board of trade, or has been found,
2 by a foreign regulatory authority, to have failed
3 reasonably to supervise, with a view to pre-
4 venting violations of such statutory provisions,
5 rules, and regulations, another person who com-
6 mits such a violation, if such other person is
7 subject to his supervision.

8 “(7) Such entity is subject to any final order of
9 a State commission (or any agency or officer per-
10 forming like functions), State authority that super-
11 vises or examines banks, savings associations, or
12 credit unions, State insurance commission (or any
13 agency or office performing like functions), an ap-
14 propriate Federal banking agency (as defined in sec-
15 tion 3 of the Federal Deposit Insurance Act (12
16 U.S.C. 1813(q))), or the National Credit Union Ad-
17 ministration, that—

18 “(A) bars such person from association
19 with an entity regulated by such commission,
20 authority, agency, or officer, or from engaging
21 in the business of securities, insurance, bank-
22 ing, savings association activities, or credit
23 union activities; or

1 “(B) constitutes a final order based on vio-
2 lations of any laws or regulations that prohibit
3 fraudulent, manipulative, or deceptive conduct.

4 (8) Such entity is subject to statutory disquali-
5 fication within the meaning of section 3(a)(39) of
6 the Securities Exchange Act of 1934.”.

7 (c) NATURAL GAS ACT PENALTIES.—Section 21 of
8 the Natural Gas Act is amended by adding the following
9 new subsection at the end thereof:

10 “(c) AUTHORITY OF A COURT TO PROHIBIT PER-
11 SONS FROM CERTAIN ACTIVITIES.—In any proceeding
12 under this section, the court may censure, place limita-
13 tions on the activities, functions, or operations of, suspend
14 or revoke the ability of any entity (without regard to sec-
15 tion 201(f)) to participate in the transportation of natural
16 gas in interstate commerce, or the sale in interstate com-
17 merce of natural gas for resale for ultimate public con-
18 sumption for domestic, commercial, industrial, or any
19 other use if it finds that such censure, placing of limita-
20 tions, suspension, or revocation is in the public interest
21 and that one or more of the following applies to such enti-
22 ty:

23 “(1) Such entity has willfully made or caused to
24 be made in any application or report required to be
25 filed with the Commission or with any other appro-

1 appropriate regulatory agency, or in any proceeding before
2 the Commission, any statement which was at the
3 time and in the light of the circumstances under
4 which it was made false or misleading with respect
5 to any material fact, or has omitted to state in any
6 such application or report any material fact which is
7 required to be stated therein.

8 “(2) Such entity has been convicted of any fel-
9 ony or misdemeanor or of a substantially equivalent
10 crime by a foreign court of competent jurisdiction
11 which the court finds—

12 “(A) involves the purchase or sale of nat-
13 ural gas, the taking of a false oath, the making
14 of a false report, bribery, perjury, burglary, any
15 substantially equivalent activity however de-
16 nominated by the laws of the relevant foreign
17 government, or conspiracy to commit any such
18 offense;

19 “(B) arises out of the conduct of the busi-
20 ness of transmitting natural gas in interstate
21 commerce, or the selling in interstate commerce
22 of natural gas for resale for ultimate public
23 consumption for domestic, commercial, indus-
24 trial, or any other use;

1 “(C) involves the larceny, theft, robbery,
2 extortion, forgery, counterfeiting, fraudulent
3 concealment, embezzlement, fraudulent conver-
4 sion, or misappropriation of funds, or securities,
5 or substantially equivalent activity however de-
6 nominated by the laws of the relevant foreign
7 government; or

8 “(D) involves the violation of section 152,
9 1341, 1342, or 1343 or chapter 25 or 47 of
10 title 18, United States Code, or a violation of
11 a substantially equivalent foreign statute.

12 “(3) Such entity is permanently or temporarily
13 enjoined by order, judgment, or decree of any court
14 of competent jurisdiction from acting as an invest-
15 ment adviser, underwriter, broker, dealer, municipal
16 securities dealer, government securities broker, gov-
17 ernment securities dealer, transfer agent, foreign
18 person performing a function substantially equiva-
19 lent to any of the above, or entity or person required
20 to be registered under the Commodity Exchange Act
21 or any substantially equivalent foreign statute or
22 regulation, or as an affiliated person or employee of
23 any investment company, bank, insurance company,
24 foreign entity substantially equivalent to any of the
25 above, or entity or person required to be registered

1 under the Commodity Exchange Act or any substan-
2 tially equivalent foreign statute or regulation, or
3 from engaging in or continuing any conduct or prac-
4 tice in connection with any such activity, or in con-
5 nection with the purchase or sale of any security.

6 “(4) Such entity has willfully violated any pro-
7 vision of this Act.

8 “(5) Such entity has willfully aided, abetted,
9 counseled, commanded, induced, or procured the vio-
10 lation by any other person of any provision of this
11 Act, or has failed reasonably to supervise, with a
12 view to preventing violations of the provisions of this
13 Act, another person who commits such a violation,
14 if such other person is subject to his supervision.
15 For the purposes of this paragraph no person shall
16 be deemed to have failed reasonably to supervise any
17 other person, if—

18 “(A) there have been established proce-
19 dures, and a system for applying such proce-
20 dures, which would reasonably be expected to
21 prevent and detect, insofar as practicable, any
22 such violation by such other person, and

23 “(B) such person has reasonably dis-
24 charged the duties and obligations incumbent
25 upon him by reason of such procedures and sys-

1 tem without reasonable cause to believe that
2 such procedures and system were not being
3 complied with.

4 “(6) Such entity has been found by a foreign fi-
5 nancial or energy regulatory authority to have—

6 “(A) made or caused to be made in any
7 application or report required to be filed with a
8 foreign regulatory authority, or in any pro-
9 ceeding before a foreign financial or energy reg-
10 ulatory authority, any statement that was at
11 the time and in the light of the circumstances
12 under which it was made false or misleading
13 with respect to any material fact, or has omit-
14 ted to state in any application or report to the
15 foreign regulatory authority any material fact
16 that is required to be stated therein;

17 “(B) violated any foreign statute or regula-
18 tion regarding the transmission or sale of elec-
19 tricity or natural gas;

20 “(C) aided, abetted, counseled, com-
21 manded, induced, or procured the violation by
22 any person of any provision of any statutory
23 provisions enacted by a foreign government, or
24 rules or regulations thereunder, empowering a
25 foreign regulatory authority regarding trans-

1 actions in electricity or natural gas, or con-
2 tracts of sale of electricity or natural gas, trad-
3 ed on or subject to the rules of a contract mar-
4 ket or any board of trade, or has been found,
5 by a foreign regulatory authority, to have failed
6 reasonably to supervise, with a view to pre-
7 venting violations of such statutory provisions,
8 rules, and regulations, another person who com-
9 mits such a violation, if such other person is
10 subject to his supervision.

11 “(7) Such entity is subject to any final order of
12 a State commission (or any agency or officer per-
13 forming like functions), State authority that super-
14 vises or examines banks, savings associations, or
15 credit unions, State insurance commission (or any
16 agency or office performing like functions), an ap-
17 propriate Federal banking agency (as defined in sec-
18 tion 3 of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(q))), or the National Credit Union Ad-
20 ministration, that—

21 “(A) bars such person from association
22 with an entity regulated by such commission,
23 authority, agency, or officer, or from engaging
24 in the business of securities, insurance, bank-

1 ing, savings association activities, or credit
2 union activities; or

3 “(B) constitutes a final order based on vio-
4 lations of any laws or regulations that prohibit
5 fraudulent, manipulative, or deceptive conduct.

6 “(8) Such entity is subject to statutory dis-
7 qualification within the meaning of section 3(a)(39)
8 of the Securities Exchange Act of 1934.”

9 **SEC. 7. REVIEW OF PUHCA EXEMPTIONS.**

10 Not later than 12 months after the enactment of this
11 Act the Securities and Exchange Commission shall review
12 each exemption granted to any person under section 3(a)
13 of the Public Utility Holding Company Act of 1935 and
14 shall review the action of persons operating pursuant to
15 a claim of exempt status under section 3 to determine if
16 such exemptions and claims are consistent with the re-
17 quirements of such section 3(a) and whether or not such
18 exemptions or claims of exemption should continue in
19 force and effect.

20 **SEC. 8. REVIEW OF ACCOUNTING FOR CONTRACTS IN-**
21 **VOLVED IN ENERGY TRADING.**

22 Not later than 12 months after the enactment of this
23 Act, the Financial Accounting Standards Board shall sub-
24 mit to the Congress a report of the results of its review
25 of accounting for contracts in energy trading and risk

1 management activities. The review and report shall in-
2 clude, among other issues, the use of mark-to-market ac-
3 counting and when gains and losses should be recognized,
4 with a view toward improving the transparency of energy
5 trading activities for the benefit of investors, consumers,
6 and the integrity of these markets.

7 **SEC. 9. PROTECTION OF FERC REGULATED SUBSIDIARIES.**

8 Section 205 of the Federal Power Act is amended by
9 adding after subsection (f) the following new subsection:

10 “(g) RULES AND PROCEDURES TO PROTECT CON-
11 SUMERS OF PUBLIC UTILITIES.—Not later than 9 months
12 after the date of enactment of this Act, the Commission
13 shall adopt rules and procedures for the protection of elec-
14 tric consumers from self-dealing, interaffiliate abuse, and
15 other harmful actions taken by persons owning or control-
16 ling public utilities. Such rules shall ensure that no asset
17 of a public utility company shall be used as collateral for
18 indebtedness incurred by the holding company of, and any
19 affiliate of, such public utility company, and no public util-
20 ity shall acquire or own any securities of the holding com-
21 pany or other affiliates of the holding company unless the
22 Commission has determined that such acquisition or own-
23 ership is consistent with the public interest and the protec-
24 tion of consumers of such public utility.”.

1 **SEC. 10. REFUNDS UNDER THE FEDERAL POWER ACT.**

2 Section 206(b) of the Federal Power Act is amended
3 as follows:

4 (1) By amending the first sentence to read as
5 follows: “In any proceeding under this section, the
6 refund effective date shall be the date of the filing
7 of a complaint or the date of the Commission motion
8 initiating the proceeding, except that in the case of
9 a complaint with regard to market-based rates, the
10 Commission may establish an earlier refund effective
11 date.”.

12 (2) By striking the second and third sentences.

13 (3) By striking out “the refund effective date or
14 by” and “, whichever is earlier,” in the fifth sen-
15 tence.

16 (4) In the seventh sentence by striking
17 “through a date fifteen months after such refund ef-
18 fective date” and insert “and prior to the conclusion
19 of the proceeding” and by striking the proviso.

20 **SEC. 11. ACCOUNTS AND REPORTS.**

21 Section 318 of the Federal Power Act is amended by
22 adding the following at the end thereof: “This section shall
23 not apply to sections 301 and 304 of this Act.”.

24 **SEC. 12. MARKET-BASED RATES.**

25 Section 205 of the Federal Power Act is amended by
26 adding the following new subsection at the end thereof:

1 “(g) For each public utility granted the authority by
2 the Commission to sell electric energy at market-based
3 rates, the Commission shall review the activities and char-
4 acteristics of such utility not less frequently than annually
5 to determine whether such rates are just and reasonable.
6 Each such utility shall notify the Commission promptly
7 of any change in the activities and characteristics relied
8 upon by the Commission in granting such public utility
9 the authority to sell electric energy at market-based rates.
10 If the Commission finds that:

11 “(1) a rate charged by a public utility author-
12 ized to sell electric energy at market-based rates is
13 unjust, unreasonable, unduly discriminatory or pref-
14 erential,

15 “(2) the public utility has intentionally engaged
16 in an activity that violates any other rule, tariff, or
17 order of the Commission, or

18 “(3) any violation of section 101 of the Energy
19 Markets Fraud Prevention and Consumer Protection
20 Act of 2002,

21 the Commission shall issue an order immediately modi-
22 fying or revoking the authority of that public utility to
23 sell electric energy at market-based rates.”.

○