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Calendar No. 592

103D CONGRESS
2D SESSION

S. 544

[Report No. 103-351]

To amend the Federal Power Act to protect consumers of multistate utility systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 3), 1993

Mr. BUMPERS (for himself and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported by Mr. JOHNSTON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be referred to as the "Multistate Utility Company Consumer Protection Act of 1993".

SEC. 2. AFFILIATE CHARGES.

(a) Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following:

"(2) Notwithstanding any provision of the Public Utility Holding Company Act of 1935, if a public utility engages in a transaction with an affiliated company, the Commission shall have the authority to review and disallow the costs associated with such transaction for the purposes of determining a just and reasonable rate under subsection (a)(1).".

(b) Section 206(a) of the Federal Power Act (16 U.S.C. 824e(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following:

"(2) Notwithstanding any provision of the Public Utility Holding Company Act of 1935, if a public utility engages in a transaction with an affiliated company, the Commission shall have the authority to review and disallow the costs associated with such transaction for the

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~~purposes of determining a just and reasonable rate under subsection (a)(1).".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multistate Utility Consumer Protection Act of 1994".

SEC. 2. AUTHORITY TO DISALLOW RECOVERY OF CERTAIN COSTS UNDER FEDERAL POWER ACT.

Section 318 of the Federal Power Act is amended—

(1) by inserting "(a)" after "Sec. 318."; and

(2) by adding at the end thereof the following new subsections:

"(b)(1) The Commission shall have the authority to disallow recovery in jurisdictional rates of any costs incurred by a public utility pursuant to a transaction that has been authorized under section 13(b) of the Public Utility Holding Company Act of 1935, including costs allocated to such public utility in accordance with subsection (d), if the Commission determines that the recovery of such costs is unjust, unreasonable, or unduly preferential or discriminatory under sections 205 or 206 of this Act.

"(2) Nothing in the Public Utility Holding Company Act of 1935, or any actions taken thereunder, shall prevent a State commission from exercising its jurisdiction to the extent otherwise authorized under applicable law with respect to the recovery by a public utility in its retail rates

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of costs incurred by such public utility pursuant to a transaction authorized by the Securities and Exchange Commission under section 13(b) between an associate company and such public utility, including costs allocated to such public utility in accordance with subsection (d).

"(c) In any proceeding of the Commission to consider the recovery of costs described in subsection (b)(1), there shall be a rebuttable presumption that such costs are just, reasonable, and not unduly discriminatory or preferential within the meaning of this Act.

"(d)(1) In any proceeding of the Commission to consider the recovery of costs, the Commission shall give substantial deference to an allocation of charges for services, construction work or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following the enactment of this subsection.

"(2) If the Commission pursuant to subsection (d)(1) establishes an allocation of charges that differs from an allocation established by the Securities and Exchange Commission with respect to the same charges, the allocation established by the Federal Energy Regulatory Commission shall be effective twelve months from the date of the order of the Federal Energy Regulatory Commission establishing such

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allocation, and binding on the Securities and Exchange Commission as of that date.

"(e) An allocation of charges for services, construction work, or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following enactment of this subsection, shall prevent a State commission from using a different allocation with respect to the assignment of costs to any associate company.

"(f) Subsection (b) shall not apply to—

"(1) any cost incurred and recovered prior to July 15, 1994, whether or not subject to refund or adjustment; or

"(2) any uncontested settlement approved by the Commission or a State commission prior to the date of enactment of the Multistate Utility Consumer Protection Act of 1994.

"(g) IMPACT ON OTHER MATTERS.—The enactment of the Multistate Utility Consumer Protection Act of 1994 shall in no way affect FERC Docket No. FA89–28.

"(h) SAVINGS PROVISION.—Section 318(b) of the Federal Power Act shall not apply to any cost incurred and recovered prior to the date of enactment of the Multistate Utility Consumer Protection Act of 1994 pursuant to a con-

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tract or other arrangement for the sale of fuel from Windsor Coal Company or Central Ohio Coal Company which has been the subject of a determination by the Securities and Exchange Commission prior to the date of enactment of the Multistate Utility Consumer Protection Act of 1994, or any cost prudently incurred after the date of enactment of the Multistate Utility Consumer Protection Act of 1994 pursuant to such a contract or other such arrangement on or before December 31, 2000.".

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