

PUHCA REPEAL
&
THE INVESTMENT COMPANY ACT:
AN UNINTENDED PROBLEM

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PUHCA REPEAL & THE INVESTMENT COMPANY ACT: AN UNINTENDED PROBLEM

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- Panel 3 January 30, 2002 Markey-Dingell Protest To SEC:
‘Potentially hundreds of qualifying companies’?

(Their So-Called ‘Open-Floodgate’ Theory)**
- Panel 4 March 28, 2002 letter to House Energy & Commerce
Minority Staff –

From Marianne Smythe (Wilmer, Cutler), former Director
of Investment Management, Securities and Exchange
Commission, introducing:**
- Panel 5 Draft (annotated) Revision to Sec 125, HR 3406 –
confirming new draft’s ‘one-company’ application.**
- Panel 6 Draft (clean) Revision to Sec. 125, HR 3406 –
without detailing notes, same as (5) above,
confirming new draft’s ‘one-company’ application.**
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- See attachment (A) for companies filing Form U-3A-2 (Jan. 1, 2001- Dec. 31, 2001)
 - See attachment (B) for (A) companies incorporated in the U.S. , *and* having the majority voting shares of a non-utility company; and,
 - Having more than 5% of the voting shares of one or more public utility companies as defined under PUHCA.

107TH CONGRESS
1ST SESSION

H. R. 3406

To benefit consumers and enhance the Nation's energy security by removing barriers to the development of competitive markets for electric power, providing for the reliability and increased capacity of the Nation's electric transmission networks, promoting the use of renewable and alternative sources of electric power generation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2001

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To benefit consumers and enhance the Nation's energy security by removing barriers to the development of competitive markets for electric power, providing for the reliability and increased capacity of the Nation's electric transmission networks, promoting the use of renewable and alternative sources of electric power generation, 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,*

5 **Subtitle B—Provisions Regarding**
 6 **Public Utility Holding Act of 1935**

42

22 **SEC. 125. EFFECT ON INVESTMENT COMPANY ACT REGULA-**
 23 **TION.**

24 (a) **GRANDFATHER OF EXISTING HOLDINGS.**—A per-
 25 son that, on December 31, 2001—

26 (1) was an affiliate of a holding company, and

43

1 (2) held investment securities of one or more
 2 companies engaged directly or indirectly in the elec-
 3 tric or gas utility business, or other permitted busi-
 4 ness activities for a registered holding company and
 5 its subsidiaries,

6 shall not be treated as being an investment company under
 7 section 3(a)(1)(C) of the Investment Company Act of
 8 1940 (15 U.S.C. 80a-3(a)(1)(C)) on the basis of invest-
 9 ing, reinvesting, owning, holding, or trading any invest-
 10 ment securities issued by companies in which such person
 11 held such investment securities as of such date.

12 (b) **DEFINITIONS.**—As used in subsection (a):

13 (1) **HOLDING COMPANY.**—The term “holding
 14 company” has the meaning provided in section
 15 2(a)(7) of the Public Utilities Holding Company Act
 16 of 1935 (15 U.S.C. 79b(a)(7)).

17 (2) **AFFILIATE.**—The term “affiliate” has the
 18 meaning provided in section 2(a)(11) of such Act
 19 (15 U.S.C. 79b(a)(11)).

20 (3) **INVESTMENT SECURITIES.**—The term “in-
 21 vestment securities” has the meaning provided in
 22 section 3(a)(2) of the Investment Company Act of
 23 1940 (15 U.S.C. 80a-3(a)(2)).

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JOE BARTON, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
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LEE TERRY, NEBRASKA

ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

January 30, 2002

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DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Harvey L. Pitt
Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Chairman Pitt:

We are writing to express our concerns about the potential adverse impact for mutual fund investors of Section 125¹ of H.R. 3406, the "Electric Supply and Transmission Act," and to request the Commission's views and analysis of this provision.

According to recent press reports, during Congressional consideration of the National Securities Markets Improvement Act of 1996 (Public Law 104-290), the Enron Corporation sought to obtain an exemption from having to register under the Investment Company Act of

¹ Section 125 reads as follows:

SEC. 125. EFFECT ON INVESTMENT COMPANY ACT REGULATION.

(a) GRANDFATHER OF EXISTING HOLDINGS- A person that, on December 31, 2001—

- (1) was an affiliate of a holding company, and
- (2) held investment securities of one or more companies engaged directly or indirectly in the electric or gas utility business, or other permitted business activities for a registered holding company and its subsidiaries,

shall not be treated as being an investment company under section 3(a)(1)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(1)(C)) on the basis of investing, reinvesting, owning, holding, or trading any investment securities issued by companies in which such person held such investment securities as of such date.

(b) DEFINITIONS- As used in subsection (a):

(1) HOLDING COMPANY- The term 'holding company' has the meaning provided in section 2(a)(7) of the Public Utilities Holding Company Act of 1935 (15 U.S.C. 79b(a)(7)).

(2) AFFILIATE- The term 'affiliate' has the meaning provided in section 2(a)(11) of such Act (15 U.S.C. 79b(a)(11)).

(3) INVESTMENT SECURITIES- The term 'investment securities' has the meaning provided in section 3(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(2)).

1940.² When the Congress rejected Enron's efforts to obtain such an exemption, Enron reportedly obtained an administrative exemption from the Act from the SEC staff. Former SEC Chairman Arthur Levitt told the New York Times in the cited article that the granting of this exemption "may be one of those cases of the nail in the shoe of the horse. It may be one of those things that seemed insignificant at the time but can wind up being determinative." Another former SEC official was more critical: "This was a case of giving Enron an inch and they took miles. They were given a significant new opportunity, and they took it and flew it smashes into the ground."

In light of what Enron was able to do with the administrative exemption granted it by the SEC staff in 1997, we are extremely wary of granting the exemption proposed in Section 125 of H.R. 3406.

The intent of Section 125 is unclear. Curiously, there is no reference to this particular provision in the summary of H.R. 3406 posted on Representative Barton's Web site (<http://www.house.gov/barton/3406summary.html>), the detailed section-by-section analysis of the bill (<http://www.house.gov/barton/3406sectionbysection.html>), or the summary of changes made to an earlier discussion draft of the bill circulated prior to its introduction (<http://www.house.gov/barton/3406changes.html>). We recall no testimony on this matter at our hearings.

Our concern about this provision is very simple. While the heading for this section is an innocuous-sounding "Grandfather of Existing Holdings," it appears to create potentially dangerous loopholes in the system of investor protection that has enabled the mutual fund industry to grow successfully and largely scandal-free over the last 60 years. Read literally, the provision appears to state that any company that was, as of December 31, 2001, an affiliate of a holding company (as defined under the Public Utility Holding Company Act of 1935 or "PUHCA") and held investment securities (as defined under the Investment Company Act of 1940) of one or more companies engaged directly or indirectly in the electric or gas utility business, or other permitted business activities for a PUHCA registered company or its subsidiaries (which have expanded in recent years to include investments in foreign utilities, out-of-region generation companies, telecommunications companies, and other types of companies) shall not be treated as being an investment company. As a consequence, the provision appears to establish that, as of December 31, 2001, a number of existing investment companies will not be viewed as investment companies in the future based solely on certain holdings as of a date certain, regardless of the future business activities of such companies.

Under this provision, it appears to us that a registered holding company could sell a company that was an affiliate on December 31, 2001, to a third party that could use it to operate an investment company that would compete directly with registered investment companies. This unregulated "grandfathered" investment company would not be required to actually register with

² See Stephen Labaton, "Exemption Won in '97 Set Stage for Enron Woes," The New York Times, January 23, 2002, Page A1.

the Commission as an investment company and would not be subject to the same regulatory framework as other investment companies.

Alternatively, a PUHCA-registered holding company could use one of its subsidiaries in existence on December 31, 2001, to operate its own unregistered and unregulated investment company. Since Section 112 of H.R. 3406 effectively repeals PUHCA 12 months after the date of enactment, the diversification and investment restrictions of that Act would no longer apply to the portfolio of investments that would be permitted for such subsidiaries. It would therefore be free to invest in any securities or other investments, without any of the protections afforded by the Investment Company Act, such as oversight by independent directors, bans on affiliated transactions, daily marking-to-market of assets, limits on leveraging, and special full disclosure requirements.

Moreover, the special "grandfathered" investment companies that could be established pursuant to Section 125 would not be subject to the restrictions applicable to other investment vehicles, such as hedge funds, that currently rely on specific exemptions from registration under the 1940 Act. They could therefore engage in some of the risky and speculative investment strategies pursued by hedge funds with no assurance that they would be limited in size pursuant to statutory limits on the number of hedge fund investors, or restrictions limiting such funds to sophisticated investors.

As H.R. 3406 may be marked up in the Subcommittee on Energy and Air Quality as early as next month, we request your assistance and cooperation in providing responses to the following questions no later than close of business, Wednesday, February 13, 2002:

1. Please provide a list of all of the registered holding companies in existence as of December 31, 2001, and, for each such company, an organizational chart listing all affiliates of such registered holding company as of that date.
2. For each affiliate of each registered holding company in existence as of December 31, 2001, please indicate whether it is wholly or partially controlled by the registered holding company. For all partially-controlled affiliates, please provide a list of all other principal holders of equity or debt securities issued by the affiliate.
3. For each affiliate of a registered holding company in existence as of December 31, 2001, please provide a list of the officers and directors of the affiliate, and a summary of the principal businesses of the affiliate.
4. For each affiliate of each registered holding company in existence as of December 31, 2001, please provide a list of all the securities held by such companies on that date (including all equity, debt, exempt or other securities of any type), including the name of the issuer of such shares, the number of shares held by the affiliate, and the market value of such shares as of December 31, 2001.

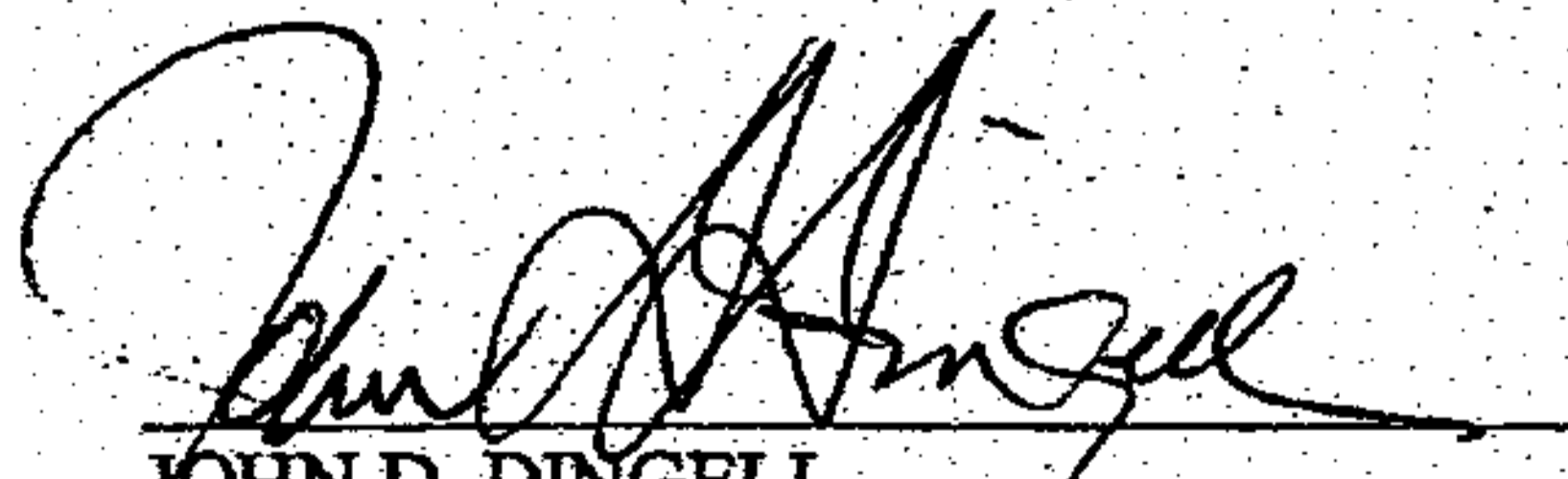
The Honorable Harvey L. Pitt

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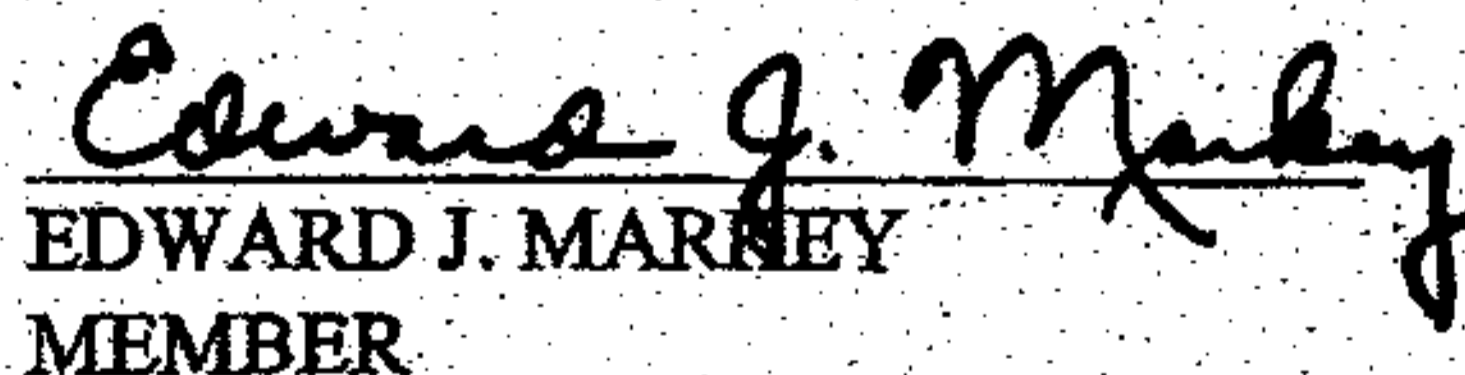
5. In light of the information provided in your responses to the previous questions, please indicate how many unregulated investment companies potentially would be permitted to exist if proposed Section 125 became law, and what securities such companies would be permitted to invest in.
6. Please provide us with the Commission's views regarding the impact of proposed Section 125 of H.R. 3406 on the SEC's ability to adequately regulate investment companies. In your response, please address the concerns that we have raised about the potential for this provision to result in the emergence of unregulated mutual funds, as well as your views on whether investors in such funds are deserving of the investor protections afforded by the Investment Company Act of 1940 and, if not, why not.
7. Please provide us with copies of all notes, memoranda, e-mails, letters, or other documents, which relate in any way to the exemption granted to Enron in 1997 from the Investment Company Act of 1940.
8. If the SEC had not granted this exemption for Enron, what impact would registration under the Investment Company Act have had upon Enron's subsequent foreign investments? Is it possible that some of the potentially fraudulent actions subsequently undertaken by Enron might have been prevented?

Thank you for your assistance and cooperation in this matter. Should you have any questions about this request, please contact us or have your staff contact either Consuela Washington (202-225-3641) or Sue Sheridan (202-226-3400) of the Committee on Energy and Commerce Democratic staff, or Jeffrey Duncan (202-225-2836) on Representative Markey's staff.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER



EDWARD J. MARKEY
MEMBER

Enclosures

cc: The Honorable W. J. "Billy" Tauzin, Chairman
Committee on Energy and Commerce

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Air Quality

The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality

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March 28, 2002

Honorable John D. Dingell
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

Honorable Edward J. Markey
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

Dear Congressmen Dingell and Markey:

We are writing in reference to Section 125 of H.R. 3406. That section would offer to a very narrow range of companies (we believe, in fact, just *one* company ("Company")) an exemption from the Investment Company Act of 1940 in the event that Congress repeals the Public Utility Holding Company Act of 1935. Without the exemption, if PUHCA were repealed, Company would be subject to regulation under the ICA.

Before getting into substance, we first want to express our appreciation for the many courtesies afforded us by your staff, and for their willingness to meet with us to go over these issues. We also want to assure you that we respect and appreciate the purpose of the Congressional fact-finding process and protocol. We hope you will find the information below to be useful, and we stand ready to answer any questions you may have.

Need for Relief

Companies that are registered under PUHCA are exempt from regulation under the ICA, and if PUHCA were repealed and if the ICA otherwise would apply, these companies would become subject to the ICA. This exemption is largely of historical interest because we believe that not a single company currently registered under PUHCA would need the exemption if PUHCA were repealed. Proposed Section 125 addresses the concern of just Company, because it is contemplating becoming a registered holding company under PUHCA and, if PUHCA were then repealed, could become subject to the ICA.

Narrowness of Relief

We also want to address your understandable concern that the Proposed Section 125, if enacted, could create an exemptive loophole in the ICA through which many investment companies could seek, inappropriately, to avoid regulation under that Act. We want to assure you that we did not intend that result and do not believe Proposed Section 125 as currently drafted would reach that result. Nonetheless, to allay your concern, and because the SEC has said it is unable to verify that Section 125 in its current proposed form would apply only to one company, we have drafted alternative wording for Section 125 ("Proposed Alternative") that we are confident would be easy to verify as applicable to only Company.

We have attached Proposed Alternative as Annex A, and have included a copy with annotations explaining how it is different from the current proposal and why we think that these differences demonstrate that Proposed Alternative will apply only to Company, as well as a clean copy. We briefly outline our reasoning:

Proposed standards re parent: The parent company of a company wishing to take advantage of the exemption would have to have met two standards as of December 31, 2001.

- It would have to have been an "exempt" *electric* utility holding company under PUHCA pursuant to a Form U-3A-2 filed with the SEC under SEC Rule 2. These filings must be made annually. We reviewed Form U-3A-2 filings for calendar year 2001 and determined that twenty-six holding companies, including Company's parent, met this test.¹
- It must have owned one or more non-utility subsidiaries incorporated in the U.S. All twenty-six parent companies identified in the previous step had non-utility subsidiaries.²

Proposed standards re company seeking the exemption: There are three standards for a company seeking the exemption in addition to the standard relating to the parent. These are that as of December 31, 2001, the company seeking the exemption:

- (1) Must have been incorporated in a state of the United States; *and*,

¹ For purposes of our review, we defined "holding company" broadly to include any company that holds an ownership interest in another company. We then reviewed Form U-3A-2 filings for the period January 1, 2001 to December 31, 2001. During that period, eighty-one initial filings under Form U-3A-2, were filed with the SEC, ten of which were subsequently amended. Each of the companies making such a filing is listed on Attachment A. Only 26 of these were *electric* holding companies.

² Our analysis of this step appears in the second column of Attachment B.

- (2) Must have held a majority of the outstanding voting securities of a company not engaged in the business of a public utility company; *and*,
- (3) Must have held more than 5% of the outstanding voting securities of one or more public utility companies as defined in PUHCA and have filed a Form 13D with the SEC to provide public notice of this ownership position.

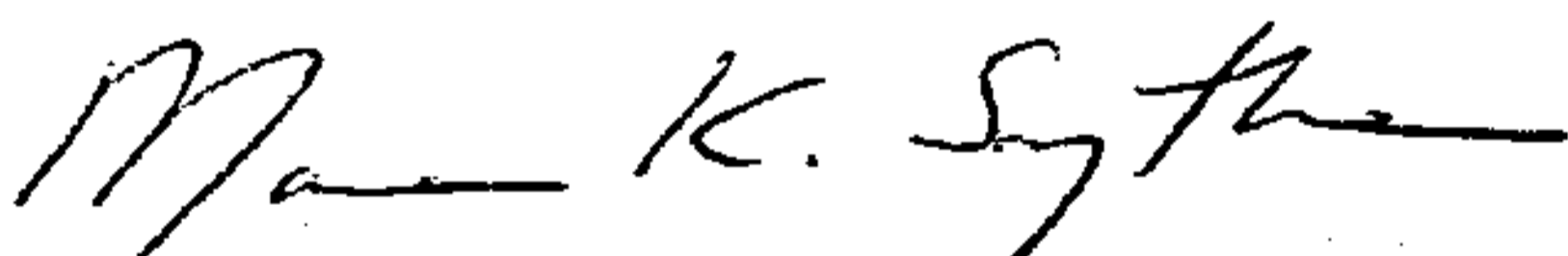
*Only Company satisfied all these requirements as of December 31, 2001.*³

The Securities and Exchange Commission

Company is also seeking an exemption from the SEC through the normal administrative process.⁴ Because of the SEC's current staffing challenges and shortages the SEC may not have been able to act on our application in time to provide the needed relief, leaving Company in the untenable position of being required to register under a statute that will make it impossible for it to continue its current business operations. Thus, we are coming to Congress because in this circumstance it can act faster than the SEC, not because we would fear the outcome at the SEC. We are confident that the unique circumstances of Company are such that it is not the type of situation that Congress intended to regulate as an investment company within the ICA.

We hope that this provides you with a better understanding of the intended purpose of Section 125. If you wish, we would be happy to provide you or any of your staff with additional information about Section 125 or to answer any other questions that you may have. We thank you for the attention that you and your staff have given to this matter.

Sincerely,


Marianne K. Smythe

³ Our analysis of these steps appears in columns 3, 4 and 5 of Attachment B.

⁴ Generally, that process entails filing an application for exemption with the SEC which can then be acted upon under the authority granted to the SEC under the ICA.

SEC. 125. EFFECT ON INVESTMENT COMPANY ACT REGULATION -with Notes

- (a) Grandfather of Existing Holdings.--A person that, on December 31, 2001--
- (1) had all of its outstanding voting securities¹ held directly by a holding company that (i) claimed exemption from the Public Utility Holding Company Act of 1935 (the "1935 Act") pursuant to Rule 2 thereunder² and (ii) was engaged in the electric utility business in the United States of America³,
 - (2) was incorporated in a State of the United States of America⁴,
 - (3) held a majority of the outstanding voting securities of a company engaged in a business other than that of an electric or gas utility company⁵ and had filed a Schedule 13D with the Securities and Exchange Commission (the "SEC") with respect to its ownership of such securities,
 - (4) beneficially owned (determined in accordance with rule 13d-3 promulgated under the Securities Exchange Act of 1934) more than five percent of the outstanding voting securities of one or more public utility companies that (i) operated as such in one or more states of the United States contiguous to each other and (ii) had outstanding common stock registered under the Securities Exchange Act of 1934⁶ and had filed a Schedule 13D with the SEC with respect to such voting securities, and
 - (5) beneficially owned five percent or more of the outstanding shares of common stock of its parent holding company and filed a Schedule 13D with the SEC reporting such beneficial ownership⁷,

shall not be treated as being an investment company under section 3(a)(1)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(1)(C)) on the basis of investing, reinvesting, owning, holding, or trading any investment securities issued by companies satisfying the criteria in subsection (a)(4) above⁸ in which such person held such investment securities as of such date.

¹ This limits the class of persons who qualify for the exemption to wholly owned subsidiaries, which Rule 2 exempt holding companies must report to the SEC on Form U-3A-2.

² This provision further clarifies that the exemption is limited to subsidiaries of Rule 2 filers as of December 31, 2001. We can determine who these companies are.

³ Finally, only subsidiaries of Rule 2 exempt holding companies where the holding company is also an electric utility company (a distinct minority) are included.

⁴ Foreign subsidiaries are specifically excluded.

⁵ The company claiming exemption also must have a majority interest in another operating business, which distinguishes it from the typical investment company.

⁶ Additionally, the public utility company in which the exempt company holds investment securities must itself have publicly traded stock.

⁷ The exempt entity must have beneficially owned 5% or more of the voting securities of its parent and have publicly reported such ownership on a Schedule 13D, which can readily be determined.

⁸ Only a public utility company's securities can qualify as investment securities.

(b) Definitions.--As used in subsection (a):

- (6) Holding company.--**The term "holding company" has the meaning provided in section 2(a)(7) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(7)).
- (7) Investment securities.--**The term "investment securities" has the meaning provided in section 3(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(2)).
- (8) Public utility company. --** The term "public utility company" has the meaning provided in section 2(a)(5) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(5)).

SEC. 125. EFFECT ON INVESTMENT COMPANY ACT REGULATION

- (a) Grandfather of Existing Holdings.--A person that, on December 31, 2001--
- (1) had all of its outstanding voting securities held directly by a holding company that (i) claimed exemption from the Public Utility Holding Company Act of 1935 (the "1935 Act") pursuant to Rule 2 thereunder and (ii) was engaged in the electric utility business in the United States of America,
 - (2) was incorporated in a State of the United States of America,
 - (3) held a majority of the outstanding voting securities of a company engaged in a business other than that of an electric or gas utility company and had filed a Schedule 13D with the Securities and Exchange Commission (the "SEC") with respect to its ownership of such securities,
 - (4) beneficially owned (determined in accordance with rule 13d-3 promulgated under the Securities Exchange Act of 1934) more than five percent of the outstanding voting securities of one or more public utility companies that (i) operated as such in one or more states of the United States contiguous to each other and (ii) had outstanding common stock registered under the Securities Exchange Act of 1934 and had filed a Schedule 13D with the SEC with respect to such voting securities, and
 - (5) beneficially owned five percent or more of the outstanding shares of common stock of its parent holding company and filed a Schedule 13D with the SEC reporting such beneficial ownership,

shall not be treated as being an investment company under section 3(a)(1)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(1)(C)) on the basis of investing, reinvesting, owning, holding, or trading any investment securities issued by companies satisfying the criteria in subsection (a)(4) above in which such person held such investment securities as of such date.

- (b) Definitions.--As used in subsection (a):
- (1) Holding company.--The term "holding company" has the meaning provided in section 2(a)(7) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(7)).
 - (2) Investment securities.--The term "investment securities" has the meaning provided in section 3(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(2)).
 - (3) Public utility company. -- The term "public utility company" has the meaning provided in section 2(a)(5) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(5)).

ATTACHMENT A

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
1. Alaska Power & Telephone Company	No
2. Alexander & Baldwin Inc.	Yes
3. Allete Inc. (formerly Minnesota Power, Inc.)	Yes
4. Alpena Power Resources Ltd.	No
5. AOG Corporation	No
6. ATC Management Inc.	No
7. Black Hills Corporation; Black Hills Power, Inc.	Yes (Black Hills Power, Inc.)
8. BUYCO, Inc.	No
9. C T Williams & Company Inc.	No
10. The Catalyst Group, Inc.	No
11. Catalyst Vidalia Acquisition Corporation	No

¹ For purposes of this chart, "holding company" is broadly defined to mean any company that owns a utility or non-utility company. Although we have included companies that would ordinarily have been excluded by strict application of the 1935 Act, these companies are eliminated at later stages of our analysis.

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
12. Catalyst Vidalia Corporation	No
13. Catalyst Vidalia Holding Corporation	No
14. Central Vermont Public Service Corporation	Yes
15. CH Energy Group, Inc.	No
16. CILCORP Inc.	Yes (Central Illinois Light Company)
17. CLECO Corporation	No
18. CMS Energy Corporation	No
19. Consolidated Edison Inc.	Yes (Consolidated Edison Company of New York, Inc.; Orange & Rockland Utilities, Inc.)
20. Constellation Energy Group, Inc.	Yes (Baltimore Gas and Electric Company)
21. Consumers Energy Company	Yes
22. Cordillera Corporation	No
23. Daglio Allan/Tatum Development Corp.	No
24. DPL Inc.	No
25. DQE, Inc.; DQE Enterprises, Inc.; DQE Energy Services, Inc.	Yes (Duquesne Light Company)

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
Energy Services, Inc.	
26. DTE Energy Company	No
27. Dynegy Inc.	No
28. Edison International	Yes (Southern California Edison Company)
29. Energen Corporation	No
30. Energysouth Inc.	No
31. Enron Corp.	No
32. FirstEnergy Corporation	Yes (Ohio Edison Company)
33. FPL Group, Inc.	No
34. Green Mountain Power Corporation	No
35. Hawaiian Electric Industries, Inc.; Hawaiian Electric Company, Inc.	Yes (Hawaiian Electric Company, Inc.)
36. HH SU Investments LLC	No
37. IDACORP, Inc.	Yes (Idaho Power Company)
38. Intermountain Industries Inc.	No
39. International Paper Company	No

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
40. IPALCO Enterprises, Inc.	No
41. Laclede Group Inc.	No
42. Marbel Energy Corporation	No
43. MCN Energy Group Inc.	No
44. MidAmerican Energy Holdings Company; MidAmerican Funding Corporation	Yes (MidAmerican Energy Company)
45. Midwest Bottle Gas Company	No
46. New Jersey Resources Corporation	No
47. Nicor Inc.	No
48. NUI Corporation	No
49. NWO Resources Inc.	No
50. OGE Energy Corporation.	No
51. PG&E Corporation	Yes (Pacific Gas and Electric Company)
52. Pinnacle West Capital Corporation	Yes (Arizona Public Service Company)
53. PNM Resources, Inc.	Yes (Public Service Company of New Mexico)

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
54. Public Service Enterprise Group Incorporated	Yes (Public Service Electric & Gas Company)
55. Puget Energy Inc.; Puget Sound Energy, Inc.	Yes (Puget Sound Energy, Inc.)
56. Questar Corporation (filing on 2/28/01)	No
57. Questar Corporation (filing on 3/01/01)	No
58. Questar Regulated Services Company	No
59. RGC Resources Inc.	No
60. Rosebud Energy Corporation	No
61. Sierra Pacific Resources	No
62. South Jersey Industries Inc.	No
63. Southwestern Energy Company	No
64. The Stanley Works	No
65. Tatum Development Corporation	No
66. TECO Energy, Inc.	No
67. Texas-New Mexico Power Company	Yes

All U-3A-2 Claimants During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) ¹ Engaged in Electric Utility Operations
68. TNP Enterprises Inc.	No
69. TNP Enterprises Inc.	No
70. TNP Enterprises Inc.	No
71. TNP Enterprises Inc.	No
72. UGI Corporation	Yes (UGI Utilities, Inc.)
73. UIL Holdings Corporation	No
74. UniSource Energy Corporation	Yes (Tucson Electric Power Company)
75. Vectren Corporation	No
76. Western Resources, Inc.	Yes
77. Wisconsin Electric Power Company	Yes
78. Wisconsin Power and Light Company	Yes
79. Wisconsin Public Service Corporation	Yes
80. WPS Resources Corporation	No
81. Wyoming Gas Fuel Corporation	No

All U-3A-2/A Claimants (Amendment Filers) During 1/1/01 through 12/31/01	U-3A-2 Claimants (Holding Companies) Engaged in Electric Utility Operations
1. CMS Energy Corporation	No
2. Consolidated Edison, Inc..	Yes (Consolidated Edison Company of New York, Inc.)
3. Constellation Energy Group, Inc. (filed on 3/01/01)	Yes (Baltimore Gas and Electric Company)
4. Constellation Energy Group, Inc. (filed on 3/21/01)	Yes (Baltimore Gas and Electric Company)
5. Edison International	Yes (Southern California Edison Company)
6. FPL Group, Inc.	No
7. IDACORP, Inc.	Yes (Idaho Power Company)
8. PG&E Corporation	Yes (Pacific Gas and Electric Company)
9. TECO Energy, Inc.	No
10. Wisconsin Power and Light Company	Yes

U-3A-2 Claimant (Holding Company Engaged in Electric Utility Operations)	Wholly Owned Subsidiary Incorporated in the U.S.	Wholly Owned Subsidiary has Majority Owned Non-utility Subsidiary and Filed Schedule 13D as Beneficial Owner of such Non-utility Subsidiary	Wholly Owned Subsidiary Owns 5% or More of Public Utility Subsidiary	Public Utility Subsidiary Filed Schedule 13D as Beneficial Owner of U-3A-2 Claimant with Electric Utility Operations
1. Alexander & Baldwin Inc.	Yes	No	No	No
2. Allete Inc.	Yes	No	No	No
3. Arizona Public Service Company	Yes	No	No	No
4. Baltimore Gas and Electric Company	Yes	No	No	No
5. Black Hills Power, Inc.	Yes	No	No	No
6. Central Vermont Public Service Corporation	Yes	No	No	No
7. Central Illinois Light Company	Yes	No	No	No
8. Consolidated Edison Company of New York, Inc. / Orange & Rockland Utilities, Inc.	Yes	No	No	No
9. Consumers Energy Company	Yes	No	No	No
10. Duquesne Light Company	Yes	No	No	No
11. Southern California Edison Company	Yes	No	No	No
12. Hawaiian Electric Company, Inc.	Yes	No	No	No
13. Idaho Power Company	Yes	No	No	No
14. MidAmerican Energy Company	Yes	No	No	No

U-3A-2 Claimant (Holding Company Engaged in Electric Utility Operations)	Wholly Owned Subsidiary Incorporated in the U.S.	Wholly Owned Subsidiary has Majority Owned Non-utility Subsidiary and Filed Schedule 13D as Beneficial Owner of such Non-utility Subsidiary	Wholly Owned Subsidiary Owns 5% or More of Public Utility Subsidiary	Public Utility Subsidiary Filed Schedule 13D as Beneficial Owner of U-3A-2 Claimant with Electric Utility Operations
15. Ohio Edison Company	Yes	No	No	No
16. Pacific Gas and Electric Company	Yes	No	No	No
17. Public Service Company of New Mexico	Yes	No	No	No
18. Public Service Electric & Gas Company	Yes	No	No	No
19. Puget Sound Energy, Inc.	Yes	No	No	No
20. Texas-New Mexico Power Company	Yes	No	No	No
21. Tucson Electric Power Company	Yes	No	No	No
22. UGI Utilities, Inc.	Yes	No	No	No
23. Wisconsin Electric Power Company	Yes	No	No	No
24. Wisconsin Power and Light Company	Yes	No	No	No
25. Wisconsin Public Service Corporation	Yes	No	Yes (WPS Investments, LLC has ownership interest in ATC LLC)	No
26. Western Resources, Inc.	Yes	Yes	Yes (Westar Industries, Inc. has ownership interest in ONEOK, Inc.)	Yes

→ Today, an Exempt Holding
Western Resources Co under
RULICA

Wolf Creek Nuke

Kans. Gas & Elec + Kans. Power & Light

wholly owned sub:

Western Industries

45% ownership Oneok

85% ownership: Protection One

IC Act 1940

IF 40% or more of the value
of your assets is passively owned
stuff, you're an Investment Co.

$$\frac{\text{Value of Oneok}}{\text{Value of Oneok} + \text{Value Protection One}} \geq 40\%$$