(c) ASSESSMENT.—(1) The Director of the Bureau of Prisons shall determine whether to accept custody of a prisoner based on an assessment of the matters described in subsection (b) and the availability of space in the Federal prison system.

(2) A decision of the Director of the Bureau of Prisons under this subsection shall not be subject to review in any court.

(d) PERIOD OF INCARCERATION.—The Federal Bureau of Prisons shall incarcerate a State prisoner under this Act—

(A) until an appropriate State authority certifies to the Director that the sentence of the prisoner has been terminated by parole, pardon, or otherwise as provided by State law; or

(B) absent such a certification, for the life of the prisoner.

By Mr. BUMPERS:

S. 544. A bill to amend the Federal Power Act to protect consumers of multistate utility systems, and for other purposes; to the Committee on Energy and Natural Resources.

MULTISTATE UTILITY COMPANY CONSUMER PROTECTION ACT OF 1993

• Mr. BUMPERS. Mr. President, I rise today to introduce the Multistate Utility Company Consumer Protection Act of 1993 and an amendment thereto.

Mr. President, there are currently nine multistate electric utility holding company systems which are registered under the Public Utility Holding Company Act of 1935 [PUHCA]. These registered holding company systems are among the largest utility companies in the United States providing retail service to millions of consumers in more than 20 states. Federal regulation of these holding company systems has been divided between the Federal Energy Regulatory Commission [FERC] and the Securities and Exchange Commission [SEC]. The legislation I am introducing today would consolidate utility holding company regulation by transferring regulatory authority over PUHCA from the SEC to FERC, providing a more efficient regulatory system and greater protection for holding company consumers.

In 1935 Congress enacted both title II of the Federal Power Act, to provide for the regulation of wholesale electric transactions, and PUHCA, to limit the operations of multistate utility holding company systems to a single region where consumers were served economically and efficiently. PUHCA strictly limited the activities which holding companies could undertake and charged the SEC with ensuring that both investors and consumers were adequately protected from the transactions which PUHCA permits—such as interaffiliate contracts. However, while the SEC has done a good job in limiting investor exposure, over the last 20 years the Commission has forgotten that PUHCA mentions consumer protection more than 50 times.

During the last two decades the SEC has rarely, if ever, prevented a holding company from engaging in a transaction on the grounds that consumers would be adversely impacted. Instead, the Commission has sought to rely on assertions made by the very companies it is supposed to regulate, without much scrutiny. Mr. President, I would challenge anyone in this chamber to give five examples in which the SEC has held an evidentiary hearing since the mid-1970's. In 1977, the General Accounting Office roundly criticized the SEC's oversight of utility holding companies; noting that:

The Commission depends almost entirely on the affected company to provide pertinent information. Division review seldom includes visits to the offices of the companies and communities served by them to verify the information provided, or to develop additional information that might be relevant.

Sadly, Mr. President, if anything things have become worse—leaving holding company consumers in a perilous position. As President Clinton stated when he testified before the Senate Energy and Natural Resources Committee in 1986:

[T]here is an enormous gap in the present scheme for regulation of [registered holding companies]. The SEC is supposed to look after the interests of ratepayers along with the interests of the financial concerns, but they never do.

While FERC also has the authority to protect consumers through the oversight of wholesale rates, the Federal Power Act strictly limits the transactions over which FERC has authority. A recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in Ohio Power Co. versus Federal Energy Regulatory Commission, Ohio Power, exemplifies FERC's limitations. In that case, a utility subsidiary of a registered holding company system purchased coal from an affiliated company. Pursuant to PUHCA, the SEC approved the price of the transaction at the level of the coal affiliates' costs in providing the service. However, when FERC reviewed the wholesale rates of the utility subsidiary it disallowed a portion of the coal costs on the grounds that the price paid to the coal affiliate far exceeded the market price for coal. The court ruled that FERC was prohibited from disallowing costs already approved by the SEC under PUHCA, permitting the utility to include the full cost of the coal purchases in its rates.

Mr. President, the Ohio Power decision raises serious concerns for consumers. A utility subsidiary of a registered holding company can engage in transactions with affiliated companies at gold-plated prices and nothing could be done about it. Furthermore, registered holding company systems are likely to use the Ohio Power case as a defense to avoid FERC scrutiny whenever possible. In fact, the Energy Corp., which currently serves Arkansas, Louisiana and Mississippi, has raised Ohio Power as a defense in a FERC proceeding examining the company's allocation of tax benefits between ratepayers and shareholders. This case is worth approximately $100 million to ratepayers. We should not permit consumers to be put at risk any longer.

The legislation I am introducing today would provide effective protection for consumers of registered holding company systems. First, regulatory authority over PUHCA would be transferred from the SEC to FERC. In addition, the legislation amends both the Federal Power Act and PUHCA to ensure that transactions between affiliates of registered holding companies are subject to effective scrutiny.

Mr. President, I wonder how many Senators asked themselves last year during the debate over the Energy Policy Act, what the SEC was doing regulating utility companies? It just doesn't make sense. What it does is lead to inefficiency by requiring FERC to regulate some transactions and the SEC to regulate others. Sometimes both agencies are called upon to review different aspects of the same transaction, such as mergers. At a time when the administration and the voters are calling for more efficiency in government, we can no longer afford to have two agencies regulate utility companies.

I have no doubt that the current administration would want the SEC to be more diligent in carrying out its duties under PUHCA. However, it would take the addition of significant resources and staff at the SEC at a time when we are looking to reduce the deficit. FERC is already well-equipped to carry out PUHCA's responsibilities. In addition, FERC is more inclined to independently consider the impact of a transaction on consumers. Mr. President, I believe the Multistate Utility Company Consumer Protection Act of 1993 would provide the appropriate resolution for many of the problems facing consumers of registered holding companies.

Mr. President, I understand that enactment of this legislation will not be easy. The registered holding companies are a politically powerful group and I am sure they will do everything within their abilities to prevent the passage of legislation that would put an end to the cozy relationship they have enjoyed with the SEC. However, it is time to act now to protect the millions of consumers served by registered holding company systems every day. I urge my colleagues to support this legislation.

Mr. President, I ask unanimous consent that the text of the bill and the amendment be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 544

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

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—

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

(a) 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).".

At the end of the bill, add the following:

SEC. 3. TRANSFER OF AUTHORITY.

There are hereby transferred to, and vested in, the Federal Energy Regulatory Commission all of the functions of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935.

SEC. 4. CONFORMING AMENDMENTS.

(a) Section 2(a)(6) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(6)) is amended to read as follows:

"(6) 'Commission' means the Federal Energy Regulatory Commission.".

(b) Section 12(i) of the Public Utility Holding Company Act (15 U.S.C. 791(i)) is amended by striking out "or Federal Power Commission, or any member, officer, or employee of either such Commission" in the first sentence and inserting in lieu thereof "or any member, officer, or employee of the Commission".

(c) Section 30(d) of the Public Utility Holding Company Act (15 U.S.C. 79t(d)) is repealed.

(d) Section 21 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79u) is amended to read as follows:

"SEC. 21. Nothing in this title shall affect (1) the jurisdiction of the Securities and Exchange Commission under the Securities Act of 1933 or the Securities Exchange Act of 1934 over any person, security, or contract; (2) the rights, obligations, duties, or liabilities of any person under the Securities Act of 1933 or the Securities Exchange Act of 1934; or (3) the jurisdiction of any other commission, board, agency, or officer of the United States (or of any State or political subdivision of any State) over any person, security, or contract.".

(e) Section 32(a) of the Public Utility Holding Company Act is amended by striking out "and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt wholesale generator" in the fourth sentence.

(f) Section 318 of the Federal Power Act (16 U.S.C. 825q) is amended to read as follows:

"SEC. 318. If any person is subject to both (1) a requirement of the Public Utility Holding Company Act of 1935 (or to a rule, regulation, or order issued pursuant to the Public Utility Holding Company Act of 1935); and (2) a requirement of this title (or to a rule, regulation, or order issued pursuant to this title) with respect to the same subject matter, the Commission shall consolidate consideration of the matter into a single proceeding and resolve the matter in a manner consistent with the purposes of both statutes.".

SEC. 5. AFFILIATE TRANSACTIONS.

(a) Section 13(b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79m(b)) is amended by striking out "at cost" in the first sentence and inserting in lieu thereof "at a price not to exceed cost".

(b) Section 13(d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79m(d)) is amended by striking out "at cost" in the second sentence and inserting in lieu thereof "at a price not to exceed cost".

SEC. 6. INCREASED EFFICIENCY.

Not later than 6 months after the date of enactment of this Act, the Federal Energy Regulatory Commission shall promulgate rules to eliminate duplication in the administration of the Public Utility Holding Company Act and the Federal Power Act."e

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By Mr. BOREN (for himself, Mr. DOLE, Mr. DANFORTH, and Mr. DORGAN):

S. 545. A bill to amend the Internal Revenue Code of 1986 to allow farmers' cooperatives to elect to include gains or losses from certain dispositions in the determination of net earnings, and for other purposes; to the Committee on Finance.

SALE OF ASSETS ACT OF 1993

Mr. BOREN. Mr. President, today Senators DOLE, DANFORTH, and DORGAN join me in introducing legislation to clarify the tax treatment of gains and losses resulting from the sale of assets by farmer cooperatives. This legislation is identical to the provision included in last year's comprehensive tax bill, H.R. 11, which was passed by the Congress but was vetoed by the President.

Currently, cooperatives that sell an asset face uncertainty regarding whether the gain or loss from that asset should be considered as resulting from patronage sources or nonpatronage sources. The classification of income as patronage or nonpatronage is important because gain from patronage sources may be distributed to patrons as a patronage dividend which is deductible to a cooperative and taxable to the patron. This bill allows nonexempt farmer cooperatives to elect patronage-sourced treatment for gain or loss from the disposition of an asset that was used to facilitate the conduct of business with farmer patrons.

Due to conflicting signals from the Internal Revenue Service regarding the classification of various items of income as patronage or nonpatronage sourced, farmer cooperatives have taken different approaches to making these determinations with regard to the sale of assets. Some cooperatives, relying on a general standard adopted by both the IRS and the courts have treated this gain or loss as patronage sourced because the assets sold actually facilitated the marketing, purchasing, or service activities of the cooperative. Other cooperatives have treated gain or loss from the sale of assets used in the patronage operations as nonpatronage sourced in reliance on an example in Treasury Regulation section 1.1382(c)(2).

Farmer cooperatives that have treated gain or loss from the sale of assets as patronage sourced have found themselves facing IRS challenge. Such challenges are surprising because the cooperatives have used an actually facilitates analysis that has been applied consistently by the courts in cases where the characterization of income has been at issue. By essentially codifying the test used by the courts, this legislation would relieve cooperatives of the uncertainty they currently face when deciding how to treat gain or loss from the sale of an asset used in their patronage business.

This issue has been pending before the Senate for some time. In 1989, the Senate Finance Committee passed a provision similar to the one we are introducing today. That provision was never considered by the full Senate. Last year, the Senate adopted the very language included in the legislation I am introducing today. That language provides cooperatives assurance regarding future asset sales, while addressing concerns raised by the Joint Committee on Taxation. The current version is also drafted to limit the revenue loss associated with the provision.

The resolution of this issue is important to the over 100 farmer cooperatives headquartered in my State of Oklahoma as well as thousands of other farmer cooperatives across the Nation and their farmer members. For these reasons, I urge my colleagues who have not done so to join in support of this needed legislation.

Mr. President, I ask unanimous consent that the text and a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 545

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

SECTION 1. GAINS AND LOSSES FROM CERTAIN DISPOSITIONS BY FARMERS CO-OPERATIVES.

(a) IN GENERAL.—Section 1388 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF GAINS OR LOSSES ON THE DISPOSITION OF CERTAIN ASSETS.—For purposes of this title, in the case of any farmer cooperative—

"(1) IN GENERAL.—A farmer cooperative may elect to include gain or loss from the sale or other disposition of any asset (including stock or any other ownership or financial interest in another entity) in net earnings of the organization from business done with or for patrons, if such asset was used by the organization to facilitate the conduct of business done with or for patrons.

"(2) ALLOCATION.—An election under paragraph (1) shall not apply to gain or loss on the sale or other disposition of any asset to the extent that such asset was used for purposes other than to facilitate the conduct of business done with or for patrons. For purposes of this paragraph, the extent of such use may be determined on the basis of any reasonable method for making allocations of income or expense between patronage and nonpatronage operations.

"(3) PERIOD OF ELECTION.—An election under paragraph (1) shall apply to the taxable year for which made and all subsequent

Document No. 140