

Sean R. Hunt

*Dynamic Interpretation or Administrative Repeal? The SEC's Promulgation of Rule 58 to Deregulate the Public Utility Holding and Company Act of 1935*

49 Admin. L. Rev. 691 (1997)

Abstract by Thomas R. Burns Jr.

This article examines the Security and Exchange Commission's (SEC's) promulgation of Rule 58 which acted as an administrative repeal to a key section of the Public Utility Holding Company Act of 1935 (PUHCA) and concludes that it was a valid exercise of the agency's power.

The article starts with a discussion of the history surrounding enactment of PUHCA and the debate surrounding its continued existence in the early 1980s. The SEC, which advocated for its repeal and felt that the reorganization of utility companies had been completed and the Act was no longer necessary. However, no congressional action was taken to repeal the Act. A vigorous study by the SEC aimed at relaxing SEC's regulation of utility companies in 1995 eventually led to the promulgation of Rule 58.

The article continues to describe some of the substantive sections of PUHCA including sections 11(b)(1) and 9(c)(3), which lie at the heart of the Act. Promulgation of Rule 58 would help holding companies to circumvent the relevant portions of the Act that require prior consent from the SEC.

Following the discussion of the Rule and the sections of the Act it affects, Hunt discusses whether the SEC had the authority to enact the Rule. He talks about the *Chevron* doctrine and agency interpretation of statutes and concludes that Rule 58 was enacted as a legitimate agency response.

The next section provides support for this conclusion by examining the statutory text of the key sections of PUHCA, and the legislative history of the sections. Hunt also provides support for the rule based on the SEC's reasonable response to competition in the utility fields. This assertion is supported by a discussion of the developments in the Electric Utility and Gas Utility Industries.

Hunt concludes by stating that the SEC promulgation of Rule 58 was a valid reinterpretation of the key section of PUHCA under the discretion given to agencies through *Chevron*. The rule was a dynamic interpretation that addressed and responded to the changing circumstances within the utility holding companies industry.