as the ''Commission'' thereby designated.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 8 FR 15814, Nov. 23, 1943; 59 FR 21927, Apr. 28, 1994]

§ 250.28 Inconsistent financial statements.

Except as otherwise authorized or required by the Commission by rule, regulation, order, statement of administrative policy, or otherwise, no registered holding company or subsidiary company thereof shall distribute to its security holders, or publish, financial statements which are inconsistent with the book accounts of such company or financial statements filed with this Commission by, or on behalf of, such company. This section shall not be deemed to prevent the distribution or publication of reasonable condensations or of unaudited financial statements or of financial statements (on a cash or other basis) pursuant to the requirements of an indenture or mortgage given to secure bonds or similar instruments, or of appropriate financial statements of a receiver or trustee appointed by a court of the United States.

[25 FR 1942, Mar. 5, 1960]

§ 250.29 Filing of reports to State Commissions.

PRELIMINARY NOTE: Reports to State Commissions shall be submitted to the Commission in paper only, whether or not the filer is otherwise required to file in electronic format.

A copy of each annual report submitted by any registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission.

[59 FR 21927, Apr. 28, 1994]

REGULATION AND EXEMPTION OF VARIOUS FINANCIAL TRANSACTIONS[2]

§ 250.40 Exemption of certain acquisitions from nonaffiliates.

(a) Section 9(a) (49 Stat. 817; 15 U.S.C. 79i), shall not apply to the acquisition, from a person other than an associate or affiliate of the acquiring company or an affiliate of an associate company, of any of the securities (excluding securities issued by the acquiring company) as specified below:

(1) *Readily marketable securities.* Any bond or other evidence of indebtedness issued by any nonassociate company which qualifies as a legal investment for trust funds or for saving banks under the laws of New York, Pennsylvania or Massachusetts, if after giving effect to such acquisition the acquiring company, together with its associate companies, will not own more than 5 percent of the particular class of such securities.

(2) *Commercial paper and similar securities.* Any prime commercial paper, trade acceptance or bank certificate of deposit maturing within 12 months from the date of issuance or payable in not more than 60 days after demand.

(3) *Acquisitions resulting from previous ownership of securities.* Securities received as a dividend, or in renewal of an evidence of indebtedness, or pursuant to the exercise of preemptive right or conversion privilege, or as a result of any reclassification, general exchange offer or reorganization: *Provided,* That no exemption shall be available under this paragraph as to the acquisition of any voting securities or securities convertible into voting securities if after giving effect to such acquisition the acquiring company will, directly or indirectly, own, control, or hold 5 percent or more of the particular class of such securities.

[2] See, also, § 250.70(b)(2) as to dealings with financial institutions where there are or have been, certain interlocking relationships.

(4) *Securities acquired in connection with routine business transactions.* In the ordinary course of the acquiring company's business (other than the business of a holding company or investment company as such), any evidence of indebtedness executed by its customers in consideration of utility or other services by such company or executed in connection with the sale of goods or of real property other than utility assets.[3]

(5) *Securities of local enterprises.* Any security issued by an industrial or other nonutility enterprise located in the service territory of the acquiring public-utility company or, if the acquiring company is not a public-utility company, in the service territory of the registered holding-company system: *Provided,*

(i) The total cost of acquisitions by the acquiring company of securities of industrial development companies organized for the purpose of, and in accordance with a State law that specifically relates to, promoting the development of business and industry in such state does not exceed an annual aggregate amount of $5 million, and

(ii) The total cost of acquisitions of securities of other local industrial or nonutility enterprises does not exceed an annual aggregate amount of $1 million. In no event, however, will the above exemption apply where, by reason of such acquisition, the acquiring company would become an affiliate of the issuer.

(6) *Small minority interests.* Any security of any subsidiary company, if prior to such acquisition the acquiring company owns 95 percent or more of the outstanding securities of the class acquired.

(b) Section 9(a) (49 Stat. 817; 15 U.S.C. 79i) shall not apply to the acquisition of any securities of a mutual or subsidiary service company: *Provided,* That such acquisition is in accordance with a program as to ownership of securities of such service company which the Commission has found to meet the requirements of section 13 (49 Stat. 825; 15 U.S.C. 79m) of the Act.

(c) Section 9(a)(1) shall not apply to the acquisition of securities of a company whose principal business is the ownership and/or licensing of trade names, trade-marks and service marks used by public-utility companies in the ordinary course of their business and the preparation, distribution and/or sale of material and services related wholly to such names and marks.

(d) Section 9(a)(2) shall not apply to the acquisition by a person who is neither a registered holding company, nor a subsidiary company thereof, of securities owned by a registered holding company, or subsidiary thereof, which are the subject of a divestment order under section 11(b), where such securities constitute all the vendor's interest in a company which does not operate any utility assets and which is a public-utility company only by reason of the ownership of a reversionary interest in utility assets: *Provided,* That such utility assets are operated under lease by a company which is not an affiliate of either the vendor or of the vendee, and the Commission finds that by reason of the duration of the lease, the ownership by the lessee of securities of the lessor and similar matters, there is no substantial probability of the lessor resuming operation of said utility assets. Such finding of the Commission may be made in connection with an application by the vendor company with respect to such sale.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 8 FR 5831, May 6, 1943; 18 FR 8890, Dec. 31, 1953; 28 FR 5664, June 11, 1963; 59 FR 21927, Apr. 28, 1994]

§ 250.41 Exemption of public utility subsidiaries with respect to limited acquisition of utility assets.

Any public utility company which is a subsidiary of a registered holding company shall be exempt from every obligation, duty, and liability imposed upon such company as a subsidiary company by the provisions of section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to an acquisition of utility assets provided that the following conditions are met:

(a) *Electric utility assets.* Any electric utility assets to be acquired are, prior

[3] See, also, § 250.48 for exemption concerning the acquisition of appliance paper in connection with the sale of electric or gas appliances.

to the acquisition, or will be immediately thereafter, connected with electric utility assets already owned and operated by the acquiring company, excluding connections over lines not operated by the acquiring company.

(b) *Gas utility assets.* Any gas utility assets to be acquired are located in or adjacent to the same service area as that in which gas utility assets already owned and operated by the acquiring company are located.

(c) *Limit in amount.* The total consideration paid for utility assets acquired pursuant to the exemption granted by this section does not exceed in any calendar year the lesser of $5 million or five percent of the gross annual revenues of the acquiring company derived from its operations as a public-utility company during the preceding calendar year.

(d) *Prohibition of fees.* No fees or commissions are to be paid by any person or company in connection with the acquisition of such utility assets except to a person or company subject to the rules of the Commission adopted under section 13 of the Act (49 Stat. 825; 15 U.S.C. 78m) or to a person or company not affiliated with the acquiring company.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

§ 250.42 Acquisition, retirement and redemption of securities by the issuer thereof.

A registered holding company or its subsidiary company may acquire, retire or redeem any security of which it is the issuer (or which it has assumed or guaranteed) without the need for prior Commission approval under sections 9(a), 10 and 12(c) of the Act: *Provided*, This section shall not apply to a transaction by a registered holding company or its subsidiary company with an associate company, an affiliate, or an affiliate of an associate company, or to a transaction by a registered holding company, as defined in § 240.13e-3(a)(3) of this chapter.

[59 FR 21928, Apr. 28, 1994]

§ 250.43 Sales to affiliates.

(a) *General provisions.* No registered holding company or subsidiary thereof shall, directly or indirectly, sell to any company in the same holding company system or to any affiliate of a company in such holding company system any securities or utility assets or any other interest in any business, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exception.* The foregoing requirement in paragraph (a) shall not apply to any sale of securities or utility assets or any other interest in any business in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities, assets or other interest does not require prior Commission approval.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15413, Dec. 29, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.44 Sales of securities and assets.

(a) *Sales of utility securities or assets.* No registered holding company shall, directly or indirectly, sell to any person any security which it owns of any public utility company, or any utility assets, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exception.* The foregoing requirement in paragraph (a) shall not apply to any sale of securities or of utility assets in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities or assets does not require prior Commission approval.

(c) *Sales pursuant to order or plan under section 11.* No registered holding company or subsidiary thereof shall, directly or indirectly, sell or otherwise dispose of any security, asset or other interest in any business which it is required to dispose of by reason of any order of this Commission under section 11(b) of the Act, or pursuant to the provisions of any plan pending or approved

under section 11(e) of the Act, unless it shall have given at least 10 days' notice to the Commission of its intention to make such sale or other disposition and;

(1) No notice shall have been given to said company by the Commission within said 10 day period that a declaration should be filed with respect to the proposed transaction, or notice shall have been given by the Commission within said 10 day period that no declaration is required; or

(2) A declaration filed by the company with respect to such transaction shall have been permitted to become effective by order of the Commission: *Provided*, That the provisions of this paragraph shall not apply to any transaction as to which a declaration is required under § 250.43(a) (Rule U–43(a)) or paragraph (a) of this section.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15413, Dec. 29, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

(a) *General provision.* No registered holding company or subsidiary company shall, directly or indirectly, lend or in any manner extend its credit to nor indemnify, nor make any donation or capital contribution to, any company in the same holding company system, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exceptions.* The following transactions shall be exempt from the declaration requirements of this section:

(1) A loan or extension of credit involving an acquisition of securities approved by the Commission under section 10 (49 Stat. 818; 15 U.S.C. 79j) or exempt from section 9(a) of the Act by section 9(b)(2) (49 Stat. 817; 15 U.S.C. 79i) thereof or by any rule in this part.

(2) Extensions of credit without interest in connection with service, construction or sales contracts (including sales of materials and supplies) or from sales of electric energy or natural or manufactured gas, or other obligations accruing in the ordinary course of business: *Provided*, That payment is made as soon as reasonably practicable.

(3) Extensions of credit to a subsidiary without interest to meet emergency requirements: *Provided*, That both the borrowing and lending company forthwith join in a statement notifying the Commission of the transaction and agreeing to take such action with respect thereto as the Commission may require.

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

(5) Failure to demand or enforce payment with respect to all or part of any obligation which is by its terms payable on demand, or of any security which has matured, if no new agreement is entered into with respect to the terms or conditions of the unpaid balance thereof.

(6) An agreement by a registered holding company or subsidiary company of a registered holding company to guarantee, to assume joint liability, or to act as a surety or as an indemnitor with respect to contingent liabilities or other obligations of a subsidiary of such company, incurred in the ordinary course of such subsidiary's business, if said agreement is in the form of:

(i) A direct guarantee, assumption of liability, surety or indemnification of the subsidiary company's obligations which is required to meet the requirements of federal, state or local law; or

(ii) An indirect guarantee of a subsidiary through a surety or indemnification of one or more surety companies or agencies, which have agreed to provide bonds of the following kinds required by subsidiary companies in the holding-company system:

(A) Court and fiduciary bonds such as appeal bonds, supersedeas bonds, condemnation bonds, or bonds required to free property from attachment or to lift an injuction;

(B) License and permit bonds such as blasting and oversize load permit bonds;

(C) United States, state and local government bonds such as customs bonds, workers' compensation self-insurance bonds, bonds required by the Internal Revenue Services, mineral right-of-way or drilling lease bonds and notary public bonds;

(D) Lost instrument bonds or other bonds which may be necessary or desirable in connection with the processing of securities or any bonds which may be required by a stock exchange on which any security is listed;

(E) Admiralty bonds;

(F) Bonds required for engineering or construction purposes such as bid, performance or payment bonds;

(G) Any other bonds of a similar nature required for routine operational purposes;

Provided, however, That: (*1*) No payment, compensation or other consideration shall be paid or accrue to the parent company in consideration for such guarantee, assumption of liability, surety or indemnification; (*2*) this rule shall not be construed to apply to a direct or indirect guarantee, assumption of liability, surety or indemnification of a subsidiary company's indebtedness for borrowed money; and (*3*) the aggregate of all such direct and indirect guarantees, assumptions of liability, sureties or indemnifications by the parent company, shall not exceed the greater of $50,000,000, or 5 percent of the aggregate amount of the other securities of the company then outstanding, such securities to be valued at (*i*) original principal amount, if there is such a principal amount, and (*ii*) fair market value as of the date of issuance, if there is no such principal amount. Par value stock shall be treated in the same manner as no par value stock, *i.e.*, as stock issued without any principal amount.

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt, and such assumption of liability constitutes the issuance of a security that is exempt, from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) under § 250.52.

(c) A declaration under paragraph (a) of this section shall not be required for the filing of a consolidated tax return by the eligible associate companies in a registered holding company system, or the execution or performance of the agreement referred to herein, if such consolidated tax return is filed pursuant to a tax agreement, in writing, relating to either federal or state taxes, for a term of one or more tax years among the associate companies included in the consolidated return, and the agreement provides for allocation among such associate companies of the liabilities and benefits arising from such consolidated tax return for each tax year in a manner not inconsistent with the following conditions:

(1) Definitions:

Consolidated tax is the aggregate tax liability for a tax year, being the tax shown on the consolidated return and any adjustments thereto thereafter determined. The consolidated tax will be the refund if the consolidated return shows a negative tax.

Corporate tax credit is a negative separate return tax of an associate company for a tax year, equal to the amount by which the consolidated tax is reduced by including a net corporate taxable loss or other net tax benefit of such associate company in the consolidated tax return.

Corporate taxable income is the income or loss of an associate company for a tax year, computed as though such company had filed a separate return on the same basis as used in the consolidated return, except that dividend income from associate companies shall be disregarded, and other intercompany transactions eliminated in the consolidated return shall be given appropriate effect. It shall be further adjusted to allow for applicable rights accrued to the associate company under paragraphs (c) (4) and (5) of this section

or under prior rules or orders, on the basis of other tax years, but carryovers or carrybacks shall not be taken into account if the associate company has been paid a corporate tax credit therefor. If an associate company is a member of the registered system's consolidated tax group for only part of a tax year, that period will be deemed to be its tax year for all purposes under paragraph (c) of this section.

Separate return tax is the tax on the corporate taxable income of an associate company computed as though such company were not a member of a consolidated group.

(2) The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

(3) The tax agreement shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c) (2)(i) or (2)(ii) of this section if the sum of the corporate taxable incomes or separate return taxes of all members of the group in any taxable year differs from the consolidated taxable income or tax because of intercompany transactions excluded from the consolidated return. It shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustments will be directed to allocating to the individual members of the group the material effects of any particular features of the tax law applicable to them.

(4) The tax agreement may exclude from the allocation under paragraph (c)(2)(i) of this section associate companies not having a positive corporate taxable income for the year being allocated, or under paragraph (c)(2)(ii) of this section associate companies not having a positive separate return tax for the year being allocated. An agreement under this paragraph shall make appropriate and equitable provision for preserving to each subsidiary company so excluded the equivalent of any rights which such company would have had, under the applicable tax law, had it filed a separate return, to use in other years any loss or credit availed of by the group through the consolidated return. With respect to carryover rights, such provisions will normally consist of recognition of the carryover in future allocations by reducing the consolidated tax allocation in the subsequent year of the subsidiary company entitled to the benefit, and by charging the excess to the companies which had benefited by the prior deduction or credit. In the case of a carryback, the excluded subsidiary company should normally be paid the amount of refund to which it would have been entitled had it filed a separate return.

(5) The agreement may, instead of excluding members as provided in paragraph (c)(4), include all members of the group in the tax allocation, recognizing negative corporate taxable income or a negative corporate tax, according to the allocation method chosen. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits. The agreement shall provide a method for apportioning such payments, and for carrying over uncompensated benefits, if the consolidated loss is too large to be used in full. Such method may assign priorities to specified kinds of benefits.

(6) The tax agreement for each taxable year shall be filed as an exhibit to the system's annual report on Form U5S (§ 259.5s of this chapter) for the previous taxable year. The initial filing after the effective date of this amendment shall be made as an amendment to the last Form U5S filed. If an existing tax agreement is merely renewed or amended, prior filings may be incorporated by reference. Amendments to a tax agreement shall be filed as an amendment to the Form U5S. Any amendment which would alter the allocation to any associate company for any period preceding its adoption shall

be conditioned on approval by the Commission if the Commission directs, within 60 days after its filing, that it be deemed to be a declaration under Rule 45(a).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 488, Jan. 21, 1955; 46 FR 18534, Mar. 25, 1981; 52 FR 48986, Dec. 29, 1987; 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

§ 250.46 Dividend declarations and payments on certain indebtedness.

(a) *Dividends.* No registered holding company or subsidiary thereof shall declare or pay any dividend on any security of such company out of capital or unearned surplus, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act.

(b) *Payments on certain indebtedness.* No registered holding company or subsidiary company thereof shall, directly or indirectly, make any payment of principal or interest on any note, bond, book account or any indebtedness however evidenced which is or was issued as, or based upon a dividend or dividends created or issued or declared from, or charged against, capital or unearned surplus, or in renewal of, or in exchange for any such obligation, whether such dividend was declared before or after the act took effect, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act. In determining whether proposed payments on any such indebtedness issued or declared as a dividend in part out of earned surplus and in part out of capital or unearned surplus, or issued in renewal of, or in exchange for, such indebtedness, fall within this paragraph, past payments on account of such indebtedness or any predecessor indebtedness shall be deemed to have been first applied in reduction of the portion of such indebtedness issued or declared as a dividend out of earned surplus.

§ 250.47 Exemption of public utility subsidiaries as to certain securities issued to the Rural Electrification Administration.

(a) *Exemption.* Any public utility company which is a subsidiary company of a registered holding company shall be exempt from the obligations, duties, or liabilities imposed by the act or any rule thereunder, on such company as a subsidiary company, with respect to the issue and sale to the Rural Electrification Administration, of any security of which it is the issuer in an amount not exceeding in any one calendar year 2 percent of the aggregate of the outstanding funded indebtedness plus the capital and surplus accounts of the issuer as of the end of the prior calendar year. Such company shall also be exempt with respect to the pledge of any security or other property as collateral for any security so issued or sold, and with respect to the redemption or retirement, in whole or in part, of any such security.

(b) *Certificate of notification.* Within 10 days after the issue or sale of any security exempt under this section, the issuer shall file with the Commission a certificate of notification on Form U–6B–2 containing the information prescribed by that form.

§ 250.48 Certain exemptions in connection with appliance sales and loans to officers or employees.

(a)(1) *Exemptions in connection with appliance sales.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, in the ordinary course of business, of any evidence of indebtedness executed by customers of such public utility company as consideration for the purchase (whether from such public utility company, from an associate company thereof, or from dealers) of standard electric or gas appliances, or reacquisition of any such security guaranteed by such company.

(2) *Guarantee.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from the provisions of section

6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) and of § 250.44 with respect to the guarantee, by endorsement or otherwise, and sale of any such customers' evidence of indebtedness. This paragraph shall be inapplicable to any company which is a registered holding company.[4]

(3) *Issuance of note.* Any public utility company, or subsidiary thereof, or associated service company thereof, shall be exempt from the provisions of section 6(a) of the Act with respect to the issue or sale of any note or draft which is, and at all times will be, secured by a pledge of such customers' evidence of indebtedness having a principal amount still unpaid at least equal to the unpaid principal amount of such note or draft. This paragraph shall be inapplicable to any company which is a registered holding company.[4]

(4) *Acquisition of guaranteed paper or retirement of notes.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act and § 250.42 with respect to the acquisition, retirement or redemption of any note or draft or customers' evidence of indebtedness issued or guaranteed by such company under the circumstances described in paragraph (b) or (c) of this section.

(b) *Exemption in connection with loans to employees.* Each registered holding company and any subsidiary company thereof is exempted from section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any evidence of indebtedness from its employee in consideration of a loan made to such employee and each subsidiary of a registered holding company is exempted from section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) with respect to the guarantee of indebtedness of it employee:

(1) If such transaction is made pursuant to a personnel policy of general application adopted in writing by the board of directors of such company, or by a committee or executive officer authorized by the board of directors so to act and communicated to the class of employees to which it applies; and does not cause the total amount of guarantees and loans of all companies in the holding-company system to or for the account of such employee, outstanding at the time of the transaction, to exceed the limits specified in the applicable personnel policy.

(2) The exemption also extends to securities or guarantees incident to bona fide advances to the employee for travel or other reimbursable expenses and current indebtedness of the employee for goods or services sold by the system companies in the ordinary course of business.

(3) Each company intending to avail itself of this exemption subsequent to the effective date of this rule shall file, as an exhibit or as an amendment to the system's annual report on Form U5S, a copy of such personnel policy.

As used in this rule, the term ''employee'' includes an officer and does not include a director who is not an officer or employee; and the term ''guarantee'' includes the assumption of an indebtedness or of an obligation to purchase such indebtedness or otherwise to provide a means of payment if the primary obligor fails to pay.

(Secs. 5(b), 9(c) and 14 of the Act, 15 U.S.C. 79e(b), 79i(c) and 79m)

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 49 FR 4717, Feb. 8, 1984]

§ 250.49 Certain exemptions granted to non-utility subsidiaries.

(a) *Companies exempted.* The exemptions provided by this section shall apply to any subsidiary of a registered holding company which subsidiary is not:

(1) A holding company,

(2) A public utility company,

(3) A company engaged in the business of performing services or construction for or selling goods to associate holding or public utility companies, or

(4) A company controlling, directly or indirectly, any company specified in paragraphs (a) (1) to (3) of this section.

(b) *Exemptions from sections 6(a) and 12(c).* Any such subsidiary company shall be exempt from the provisions of section 6(a) of the Act (49 Stat. 814; 15

[4] Any registered holding company which is also a public utility company and whose regular course of business involves activities within the scope of this section may file a declaration, regarding such activities. See § 250.22(a).

U.S.C. 79f) with respect to the issuance or sale of any securities to the vendor of supplies or equipment for use in the business of such subsidiary company, and from the provisions of any rule under section 12(c) of the Act with respect to the acquisition, redemption or retirement of any such securities.

(c) *Transactions approved by a reorganization court.* Any such subsidiary company which is the subject of a proceeding for reorganization in any court of the United States in which proceeding the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)) or which is a subsidiary within the meaning of section 2(a)(8) of the Public Utility Holding Company Act (49 Stat. 804; 15 U.S.C. 79b), of any such subsidiary company which is the subject of such a proceeding, shall be exempt from any provision of the act applicable to the appointment of any trustee for such company or to any transaction entered into with the approval (direct or indirect) of such court: *Provided*, That such transaction does not involve the acquisition of any utility assets or securities of any public utility or holding company; *Provided further*, That this paragraph shall be inapplicable to any subsidiary company which is the subject of reorganization proceedings (or any subsidiary of such subsidiary company within the meaning of section 2(a)(8) of the Public Utility Holding Company Act), where such subsidiary company, or any subsidiary thereof, is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company.

(d) *Exemption from section 9(a).* (1) Any such subsidiary company primarily engaged in the production of natural gas or crude oil or sulphur, or in two or more of such businesses, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, from a person other than an associate or an affiliate of the acquiring company or an affiliate of an associate company, of gas leases, oil leases, or other production leases, in connection with the business in which such subsidiary is so engaged: *Provided, however*, That the exemption provided by this paragraph shall not be applicable if such acquisition is part of a transaction which involves the filing of an application or declaration with the Commission by such subsidiary company.

(2) Any such subsidiary company which is subject to regulation as a water, telephone, common carrier or other public service company, under the laws of the State in which it operates, shall be exempt from section 9(a) of the Act with respect to any acquisition expressly authorized by the State commission of such State provided that such acquisition does not include utility assets, securities of a public utility or holding company, or any other interest in any class of business other than that in which such public service company is engaged.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 12 FR 1649, Mar. 11, 1947; 59 FR 21928, Apr. 28, 1994]

§ 250.50 [Reserved]

§ 250.51 Acquisitions pursuant to preliminary agreements and invitation for tenders.

For the purpose of section 9(a) of the Act, the term ''acquire'' is defined to include the making of a contract or agreement (herein called Preliminary Agreement) pursuant to which a person subject to section 9(a) (of the Act) (herein called the Proposed Acquirer) contingently or otherwise acquires any right or becomes subject to any obligation to acquire directly or indirectly any securities or utility assets or any other interest in any business, or to direct any other person to make any sale or acquisition of any securities or utility assets or any other interest in any business. Except where an exemption from section 9(a) (of the Act) may be applicable, the making of such Preliminary Agreement or the taking of any action in connection therewith, without prior approval of the Commission, by any person so subject to section 9(a) (of the Act) shall be deemed unlawful, unless all of the following conditions are satisfied:

(a) The transaction contemplated by the Preliminary Agreement is expressly conditioned on Commission approval and the application for such approval is filed with the Commission as soon as practicable.

(b) No standby, option, or similar fee is paid or payable by or on behalf of the Proposed Acquirer as consideration for the Preliminary Agreement.

(c) The Proposed Acquirer does not indemnify or agree to indemnify any person against any market or investment risk in connection with such person's acquisition, retention or disposition of the subject matter of the proposed acquisition.

(d) The Proposed Acquirer does not transfer to any person (other than a subsidiary or successor in interest by merger or consolidation), by way of assignment or otherwise, any of its rights or interests in respect of the subject matter of the proposed acquisition unless such transfer is conditioned upon consummation of the Preliminary Agreement following its approval by the Commission.

(e) In case a proposed transaction includes an acquisition of securities pursuant to an invitation for tenders to be made prior to the approval of such acquisition, provision shall be made that any person tendering such securities (the Tenderer) may demand in writing the return of any deposited securities at any time after 60 days from the initial mailing or publication of the invitation for tenders unless prior to the receipt of such demand either (1) the proposed acquisition has been approved by the Commission and the Proposed Acquirer is obligated to consummate the transaction or (2) the Tenderer has been issued a transferable certificate of deposit which meets the conditions specified in paragraph (f) of this section.

(f) A transferable certificate of deposit for purposes of paragraph (e) of this section may be issued in exchange for tendered securities subject to the following conditions:

(1) The terms of the certificate of deposit as proposed to be issued are specified in the invitations for tenders, including equitable provisions for return of the tendered securities in the event the proposed transaction is not approved by the Commission or otherwise fails of consummation, for exercise of voting rights and for receipt of dividends or interest by the Tenderer during the deposit period.

(2) The Proposed Acquirer files with the Commission an application-declaration proposing the issuance of such certificates of deposit in exchange for tendered securities.

(3) Upon notice and after a hearing which shall be limited to the fairness of the terms and conditions of such issuance and exchange and to compliance with the conditions of this Rule, the Commission in its descretion may by order permit such issuance and exchange on such terms and conditions as it shall approve. Any person to whom it is proposed to issue a certificate of deposit shall be entitled to appear at such hearing.

(4) If the terms and conditions specified in the certificates of deposit to be issued pursuant to order of the Commission differ from those specified in the invitation for tenders previously published by the Proposed Acquirer, the Commission may in such order require the Proposed Acquirer to give notice thereof by mail (and publication if deemed appropriate) to all persons who have tendered their securities and to provide up to 20 days after mailing of such notice for any such person to elect, in a manner prescribed by the Commission, either to continue to or revoke his tender. The terms and conditions specified in the certificates of deposit may be modified only pursuant to order of the Commission.

[33 FR 9287, June 25, 1968]

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the business of the public-utility subsidiary company;

(2) The issue and sale of the security have been expressly authorized by the state commission of the state in which

the subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and related rules with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the existing business of the subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; *Provided,* That any security issued to an associate company by any energy-related company subsidiary, as defined in § 250.58, shall not be exempt under these provisions unless, after giving effect to the issue of the security, the aggregate investment by a registered holding company or its subsidiary in the energy-related company subsidiary and all other energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 (17 CFR 259.206) containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by any associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act (15 U.S.C. 79i(a)); provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

(e) A copy of any Certificate of Notification on Form U–6B–2 (§ 259.206) that is filed with this Commission under this section with respect to any security issued by a subsidiary of a registered holding company under paragraph (b) of this section and acquired by a public-utility company that is an associate company of the issuer, shall be submitted concurrently to each state commission having jurisdiction over the retail rates of the public-utility company.

[60 FR 33639, June 28, 1995, as amended at 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

§ 250.53 Certain registered holding company financings in connection with the acquisition of one or more exempt wholesale generators.

(a) In determining whether to approve the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company or companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, if the following conditions are met:

(1) Aggregate investment does not exceed 50% of the system's consolidated retained earnings.

(i) *Aggregate investment* means all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for

which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

(ii) *Consolidated retained earnings* means the average of the consolidated retained earnings of the registered holding company system as reported for the four most recent quarterly periods on the holding company's Form 10–K or 10–Q (§ 249.308a or § 249.310 of this chapter, respectively) filed under the Securities Exchange Act of 1934, as amended.

(2) The registered holding company maintains books and records to identify investments in and earnings from any exempt wholesale generator or foreign utility company in which it directly or indirectly holds an interest. In addition:

(i) For each United States exempt wholesale generator in which the registered holding company directly or indirectly holds an interest:

(A) The books and records of such entity shall be kept in conformity with United States generally accepted accounting principles (''GAAP'').

(B) The financial statements shall be prepared according to GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements as the Commission may request.

(ii) For each foreign exempt wholesale generator or foreign utility company which is a majority-owned subsidiary company of the registered holding company:

(A) The books and records of such entity shall be kept in conformity with GAAP.

(B) The financial statements for such entity shall be prepared in conformity with GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements, or copies thereof, in English, as the Commission may request.

(D) For purposes of this section, a ''majority-owned subsidiary company'' is one in which the registered holding company directly or indirectly owns more than 50% of the voting securities.

(iii) For each foreign exempt wholesale generator or foreign utility company in which the registered holding company directly or indirectly owns 50% or less of the voting securities, the registered holding company shall proceed in good faith, to the extent reasonable under the circumstances, to cause:

(A) The books and records of such entity to be kept in conformity with GAAP; provided, that if the books and records are maintained according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the accounting principles, practices and methods used to maintain the books and records.

(B) The financial statements for such entity to be prepared according to GAAP; provided, that if the financial statements are prepared according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the balance sheet line items and net income reported in the financial statements.

(C) Access by the Commission to such books and records and financial statements, or copies thereof, in English, as the Commission may request; provided, that in any event, the registered holding company shall make available to the Commission any books and records of the foreign exempt wholesale generator or foreign utility company that are available to the registered holding company.

(3) No more than two percent of the employees of the system's domestic public-utility companies render services, at any one time, directly or indirectly, to exempt wholesale generators or foreign utility companies in which the registered holding company, directly or indirectly, holds an interest;

provided, that the Commission has previously approved the rendering of such services.

(4) The registered holding company simultaneously submits a copy of any Form U–1 (17 CFR 259.101) and certificate under section 250.24 filed with the Commission under this section, as well as a copy of Item 9 of Form U5S (17 CFR 259.5s) and Exhibits G and H thereof with every federal, state or local regulator having jurisdiction over the retail rates of any affected public-utility company.

(b) Notwithstanding the foregoing provisions, the section shall not be available if:

(1) The registered holding company, or any subsidiary company having assets with book value exceeding an amount equal to 10% or more of consolidated retained earnings, has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in such proceeding; or

(2) The average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings.

(c) An applicant that is unable to satisfy the requirements of paragraphs (a) and (b) of this section must affirmatively demonstrate that the proposed issue and sale of a security to finance the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator:

(1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

(d) The Commission shall issue an order with respect to a proposed transaction under section 32(h)(3) of the Act within 120 days of completion of the record concerning such issue, sale or guarantee.

[58 FR 51504, Oct. 1, 1993]

§ 250.54 Effect of exempt wholesale generators on other transactions.

In determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to exempt wholesale generators or foreign utility companies, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator or a foreign utility company upon the registered holding company system if § 250.53 (a), (b) and (c) are satisfied.

[58 FR 51505, Oct. 1, 1993]

§ 250.57 Notices and reports to be filed under section 33.

(a) *Notification of Status as Foreign Utility Company.* Form U–57 (§ 259.207 of this chapter), notification of status as a foreign utility company, may be filed by, or on behalf of, an entity that seeks to become a foreign utility company. If the criteria of section 33 of the Act are otherwise met, the entity shall be deemed to be a foreign utility company upon the filing of such form.

(b) *Reporting Requirement for Associate Public-Utility Companies.* A United States public-utility company that is an associate company of a foreign utility company shall file with the Commission a report on Form U–33–S (§ 259.405 of this chapter) on or before May 1 of each year. This requirement

shall not apply to public-utility companies that are subsidiaries of a registered holding company or of a holding company that is exempt from registration under section 3(a) (1) or (2) of the Act, pursuant to section 250.2. In addition, a holding company that is exempt from registration by Commission order may file a single Form U–33–S on behalf of all of its public-utility subsidiaries.

[58 FR 51505, Oct. 1, 1993]

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) $50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a holding company that is registered solely by reason of ownership of voting securities of gas utility companies, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For purpose of this section:

(1) The term *energy-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) The rendering of energy management services and demand-side management services;

(ii) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

(iv) The sale of electric and gas appliances; equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity; and equipment that enables the use of gas or electricity as an alternate fuel; and the installation and servicing thereof;

(v) The brokering and marketing of energy commodities, including but not limited to electricity, natural or manufactured gas and other combustible fuels;

(vi) The production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; and environmental licensing, testing and remediation;

(viii) The development, ownership or operation of ''qualifying facilities,'' as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; and

(x) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; *Provided*, That any company engaged in the activities specified in paragraphs (b)(1)(ii), (b)(1)(iii) with respect to electric powered vehicles, (b)(1)(vi), (b)(1)(ix) or (b)(1)(x) of this section, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily electric utility companies; and *Provided further*, That any company engaged in the activities specified in paragraph (b)(1)(iii) of this section with respect to compressed natural gas powered vehicles, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily gas utility companies.

(2) The term *gas-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) Activities permitted under section 2(a) of the Gas-Related Activities Act of 1990, 104 Stat. 2810; and

(ii) Activities specified in section 2(b) of the Gas-Related Activities Act and approved by order of the Commission under sections 9 and 10 of the Act (15 U.S.C. 79i–j).

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company or any subsidiary company thereof.

(c) *Report on related business activities.* For each quarter of the fiscal year of the registered holding company in which any acquisition that is exempt under this section is made, and for each such quarter thereafter in which the acquired interest is held, the registered holding company shall file with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Quarterly Report on Form U–9C–3 (§ 259.208 of this chapter). Such filing shall be made within 60 days following the end of the first three quarters of the fiscal year, and within 90 days after the end of the fourth quarter.

[62 FR 7916, Feb. 20, 1997]

SOLICITATIONS AND REORGANIZATIONS

§ 250.60 Meaning of word "authorization".

The word ''authorization'', as used in §§ 250.60 to 250.64, includes ''any proxy, consent, authorization, power of attorney, deposit, or dissent'', as those words are used in section 11(g) of the Act (49 Stat. 820; 15 U.S.C. 79k) and ''any proxy, power of attorney, consent, or authorization'', as those words are used in section 12(e) (49 Stat. 823; 15 U.S.C. 79*l*) of the Act.

§ 250.61 Solicitations other than in connection with a reorganization or transaction which is the subject of an application or declaration.

The solicitation of any authorization regarding any security of a registered holding company or subsidiary company thereof, except solicitations in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of any application or declaration filed with the Commission, shall be subject to all rules and regulations now or hereafter adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 (48 Stat. 895; 15 U.S.C. 78n) that would be applicable to such solicitation if such security were registered on a national securities exchange: *Provided*, That unless such security is actually registered on a national securities exchange, no documents need be filed with any such exchange in connection with such solicitation.

[6 FR 5485, Oct. 28, 1941]