from registration as a clearing agency and for amendment to registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934.

[40 FR 52359, Nov. 10, 1975, as amended at 51 FR 12134, Apr. 9, 1986]

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

REGISTRATION AND GENERAL EXEMPTIONS

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Washington, DC 20549 and from each of the Commission's regional and district offices.

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AUTHORITY: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

SOURCE: Rule U, 6 FR 2015, Apr. 19, 1941, unless otherwise noted.

NOTE: In §§ 250.1 to 250.105 the numbers to the right of the decimal point correspond with the respective rule numbers of Regulation U.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

REGISTRATION AND GENERAL EXEMPTIONS

§ 250.1 Registration.

(a) *Notification of registration.* Notifications of registration pursuant to section 5(a) of the act (49 Stat. 812; 15 U.S.C. 79(e) shall be filed on Form U–5A.

(b) *Registration statement.* Every registered holding company and person registering as a company proposing to become a holding company, shall file with the Commission a registration statement on Form U–5B within 90 days after becoming a registered holding company.

(c) *Annual report.* Every registered holding company shall file, on or before the first of May in the year following that in which it filed its registration statement, and in every succeeding year, an annual report on Form U5S (§ 259.5s of this chapter): *Provided, however,* That where any holding company system includes more than one registered holding company, the annual report shall be filed by the top registered holding company in such system and shall be signed on behalf of each registered holding company in such system by the authorized officer of each such registered holding company.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 16 FR 2576, Mar. 21, 1951; 37 FR 1472, Jan. 29, 1972; 61 FR 49961, Sept. 24, 1996]

§ 250.2 Exemption of holding companies which are intrastate or predominantly operating companies.

(a) *General provisions.* Any holding company, and every subsidiary company thereof as such, shall, upon the filing of an exemption statement on Form U–3A–2 and subject to the filing of such exemption statement on or before March 1 of each year thereafter, and subject to the provisions of Rule U–6, be exempt from all the provisions of the act and rules thereunder, except section 9(a)(2) of the act, if:

(1) Such holding company, and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized; or

(2) Such holding company is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.

(b) *Exception.* Unless otherwise required by the Commission, a holding company which is a subsidiary of a registered holding company need file only the initial statement on Form U–3A–2.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15412, Dec. 29, 1945]

§ 250.3 Exemption of certain banks.

(a) *General exemption.* Subject to the provisions of § 250.6 and to the requirements contained in paragraph (c) of this section, any bank shall be exempt from any obligation, duty, or liability imposed by the act upon such bank as a holding company solely by reason of such bank owning, controlling, or holding with power to vote any securities of any public-utility or holding company which the bank:

(1) Holds as collateral for a bona fide debt; or

(2) Holds in the ordinary course of its business as a fiduciary; or

(3) Has acquired solely for purposes of liquidation in connection with a bona fide debt previously contracted and has owned beneficially for a period of not more than two years.

(b) *Exemptions from section 9(a)(2).* Subject to the requirements contained in paragraph (c) of this section, any bank shall be exempt from section 9(a)(2) of the act with respect to the acquisition of any securities by such bank:

(1) As collateral for a bona fide debt; or

(2) Solely for purposes of liquidation in connection with a bona fide debt previously contracted; or

(3) In the ordinary course of its business as fiduciary; or

(4) Which is not a voting security or convertible into a voting security.

(c) *Statements.* Any bank claiming exemptions pursuant to the provisions of this section shall file a statement on Form U–3A3–1 (§ 259.403 of this chapter) within 30 days after the last day of February of each year. No such statement is required, however, with respect to any security holdings as to which such form is inapplicable by its provisions.

(d) *Definition of bank.* The term ''bank'', as used in this section, means any company primarily engaged in business as a commercial bank or trust company, or both, and subject to regulation or examination under the laws of the United States or of any State, or any receiver, conservator, or liquidating agent thereof in his capacity as such.

[16 FR 253, Jan. 10, 1951]

§ 250.4 Exemption of certain brokers, dealers and underwriters.

(a) *General exemption.* Subject to the provision of § 250.6, any broker, dealer or underwriter, as defined in paragraph (c) of this section, shall be exempt from any obligation, duty, or liability imposed by the act upon such person as a holding company, solely by reason of such person owning, controlling, or holding with power to vote any securities of any public utility or holding company which are:

(1) Not beneficially owned by such persons and are subject to any voting instructions which may be given by customers or their assigns; or

(2) Acquired within 12 months in the ordinary course of business as a broker, dealer or underwriter with the bona

fide intention of effecting distribution of the specific securities so acquired.

(b) *Exemption from section 9(a)(2).* Any broker, dealer or underwriter, as defined in paragraph (c) of this section shall be exempt from section 9(a)(2) of the act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any securities for the account of customers, or in connection with any underwriting entered into with the intention of effecting immediate distribution of such securities.

(c) *Definition of broker, dealer or underwriter.* As used in this section, the terms ''broker'' or ''dealer'' have the meaning set forth in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (48 Stat. 882; 15 U.S.C. 78c), and the term ''underwriter'' means any underwriter as defined in section 2(11) of the Securities Act of 1933 (48 Stat. 74, 905; 15 U.S.C. 77b) who is regularly engaged in business as such and is not a registered holding company.

§ 250.5 Exemption of certain foreign holding companies.

Any holding company not organized under the laws of any State of the United States or the District of Columbia, and owning no utility assets located within any State of the United States or the District of Columbia and having no subsidiaries or affiliates owning any assets so located, shall, subject to the provisions of § 250.6, be exempt from all the provisions of the act and rules thereunder: *Provided,* That such exemption shall not be applicable to any acquisition of utility assets located within any State of the United States or the District of Columbia or of any security of any company owning such assets or having any subsidiary owning such assets, if, as a result of such acquisition of securities, the acquiring company will become an affiliate of the issuer, except an issuer within any class specified in § 250.10(a).

§ 250.6 Termination of exemptions.

If it appears to the Commission (on the basis of statements claiming exemption or otherwise) that a substantial question of law or fact exists as to whether any holding company claiming exemption under § 250.2, § 250.3, § 250.4, § 250.5, or § 250.10 or any other section now or hereafter in force pursuant to section 3(a) of the Act exempting any class of holding companies from the registration requirements of the act, is within the exemption afforded by any such section, or if it appears that any question exists as to whether the exemption of any such company may be detrimental to the public interest or the interest of investors or consumers, the Commission may notify such holding company to that effect by registered mail. Thirty days after such notification, such exemption shall terminate, without prejudice to the right of such holding company to file an application for an order granting such an exemption pursuant to any applicable section of the act, and without prejudice to any temporary exemption provided for by the act if such application is filed in good faith.

[6 FR 5950, Nov. 25, 1941]

§ 250.7 Companies deemed not to be electric or gas utility companies.

(a) Any company which is primarily engaged in one or more businesses other than the business of an electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of section 2(a)(3) or section 2(a)(4) of the Act if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed an average annual amount of $5,000,000 over the preceding three calendar years. There may be excluded from the gross sales specified:

(1) Sales of electric energy or natural or manufactured gas to tenants or employees of the operating company for their own use and not for resale; and

(2) Sales of gas to industrial consumers or in enclosed portable containers.

(b)(1) Any company whose only connection with the generation, transmission, or distribution of electric energy is the ownership or operation of facilities used for the production of heat or steam from special nuclear material which heat or steam is used in the generation of electric energy shall not be deemed an electric utility company within the meaning of section 2(a)(3) of the Act, if such company is

organized not for profit and is engaged primarily in research and development activities.

(2) As a prerequisite to being entitled to the status afforded by paragraph (b)(1) of this section, any such company shall file with this Commission a statement that such company falls within the provisions of that subparagraph, including as exhibits (i) copies of its charter, by-laws and any licenses issued by the Nuclear Regulatory Commission to such company; (ii) a list of its members or stockholders indicating their respective percentages of voting power; and (iii) if such company was in existence at the end of the preceding calendar year, a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(3) As a prerequisite to retaining the status afforded by paragraph (b)(1) of this section, any such company shall annually on or before May file a statement with this Commission that such company continues to fall within the provisions of that subparagraph, including as exhibits (i) any changes or additions to its charter or by-laws or list of members or stockholders or any licenses issued by the Nuclear Regulatory Commission to such company since the time of the last filing hereunder, and (ii) a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(4) If it appears to the Commission (on the basis of the aforesaid statements or otherwise) that a substantial question of law or fact exists as to whether any company is entitled to the status afforded by paragraph (b)(1) of this section, the Commission may notify such company to that effect by registered mail. Thirty days after such notification the status afforded by paragraph (b)(1) of this section shall no longer be available to such company, without prejudice to the right of such company to file an application for an order granting an exemption from the application of section 2(a)(3) of the Act, and without prejudice to any temporary exemption provided by that section if such an application is filed in good faith. The Commission will grant such an application if it finds that the standards set forth in paragraph (b)(1) of this section are satisfied.

(c) Any company, which (1) owns no utility assets located within any State of the United States, (2) has no subsidiary company owning any such assets so located, and (3) is engaged solely in business outside the United States, shall not be deemed to be an electric or gas utility company within the meaning of section 2(a)(3) or (a)(4) of the Act, if its gross sales of electric energy or of natural or manufactured gas distributed at retail, by means of facilities owned or operated by such company, did not exceed 1 percent of its gross revenues during the previous calendar year.

(d) A company shall not be deemed to be an electric utility company or a gas utility company which owns any of the facilities specified in sections 2(a)(3) and (4) [of the Act] *Provided*, That:

(1) Such company owns the facility as a company, as a trustee, or as holder of a beneficial interest under a trust, or as a purchaser or assignee of any of the foregoing; and

(i) Such facility is leased under a net lease directly to a public utility company either as a sole lessee or joint lessee with one or more other public utility companies, and such facility is or is to be employed by the lessee in its operations as a public utility company; and

(ii) Such company is otherwise primarily engaged in one or more businesses other than the business of a public utility company, or is a company all of whose equity interest is owned by one or more companies so engaged, either directly or through subsidiary companies; and

(iii) The terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over the rates and service of the public utility company which leases such facility; and

(iv) The lease of the facility extends for an initial term of not less than 15 years, except for termination of the lease upon events therein set forth, unless the owner shall state in the initial

certificate filed pursuant to paragraph (d)(5) of this section that a shorter term specified in the lease is not less than two-thirds of the expected useful life of the facility; and

(v) The rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues or income of the public utility company, or any part thereof.

Paragraphs (d)(1)(iii) and (iv) of this section shall not apply to a lease executed before, or within 30 days after, the effective date of this section, if the certificate required by paragraph (d)(5) of this section is filed within 60 days after such effective date.

(2) Paragraph (d)(1) of this section shall cease to be applicable in the event of termination of the lessee's right to possession or use of the facility during its term, unless within 90 days of the date of termination, and subject to such prior or subsequent regulatory and other approvals as by law may be required, such company, as defined in this section, negotiates a new lease or an operating agreement at a fixed rental.

(3) A public utility company shall not cease to be such by reason of a lease, directly or indirectly, of part or all of its facilities to any associate company or to any entity, whether or not a company, as defined in section 2(a)(2) of the Act.

(4) Except to the extent provided in paragraphs (d)(1) and (6) of this section, this section shall not relieve any company from such other provisions of the Act, and rules and regulations promulgated thereunder, as may be applicable.

(5) Any company specified in paragraph (d)(1) of this section shall file, or join in the filing of, a certificate on a form prescribed by the Commission, as to each lease within 30 days of its execution. Upon any transfer of legal or beneficial ownership, such new owner shall file an appropriate amendment within 30 days of such transfer. If the lease is amended in a manner which would alter any item of the certificate, or if the facility ceases, for any reasons, to be subject to the lease, the holder of legal title to the facility shall file an appropriate amendment within 30 days of the event.

(6) A company shall not be deemed to be an electric utility company by reason of ownership of any interest in nuclear fuel and facilities incident to its use, if the operation and use thereof is vested by lease or contract in one or more public utility companies, unless the consideration paid by a public utility company for the use of such fuel and facilities, or of the heat or energy produced thereby, includes an amount based, directly or indirectly, on the revenue or income of the public utility company or any part thereof. Any such company shall file, or join in the filing of, the certificates specified in paragraph (d)(5) of this section. A certificate with respect to a lease or contract executed prior to, or within 30 days after, the effective date of this section shall be filed within 60 days after such effective date.

(7) The provisions of paragraphs (d)(1) and (5) of this section, and the filing requirements of paragraph (d)(6) of this section shall not apply if the facilities therein specified are in possession of and operated by one or more governmental bodies or instrumentalities thereof specified in section 2(c) of the Act.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 7 FR 3423, May 8, 1942; 21 FR 5438, July 20, 1956; 32 FR 13487, Sept. 27, 1967; 38 FR 16998, June 28, 1973; 59 FR 21927, Apr. 28, 1994]

§ 250.8 Exemption of subsidiaries subject to jurisdiction of Interstate Commerce Commission.

Any subsidiary company of a registered holding company, which subsidiary is subject to the jurisdiction of the Interstate Commerce Commission but is not an electric or gas utility company or a holding company, shall be exempt from all the provisions of the act and rules thereunder, with respect to any transaction which is approved by the Interstate Commerce Commission, except that the exemption from section 9(a) (49 Stat. 817; 15 U.S.C. 79i) provided by this rule shall not be applicable to any acquisition of securities of any electric or gas utility company or holding company or to any acquisition by which such subsidiary will become a public utility or holding company.

§ 250.10 Effect of certain exemptions.

(a) *Parent holding companies exempt where subsidiaries have obtained, or applied for, certain exemptions.* Subject to the provisions of § 250.6, any holding company shall be exempt from any obligation, duty, or liability imposed on it as a holding company solely by reason of such company having as a subsidiary any company which, insofar as it is either a public utility or a holding company, is:

(1) A company declared not to be a public utility or holding company by rule or order under section 2(a)(3), 2(a)(4), or 2(a)(7) of the Act (49 Stat. 804; 15 U.S.C. 79b), or is exempted without qualification by order pursuant to section 3(b) from all obligations, duties, or liabilities imposed on it as a subsidiary company; or

(2) A company exempted as a holding company from sections 4 and 5(a) of the Act (49 Stat. 812; 15 U.S.C. 79d, 79e) by order under subparagraph (3), (4), or (5) of section 3(a) (49 Stat. 810; 15 U.S.C. 79c), or by § 250.3, § 250.4, or § 250.5; or

(3) A company which is only indirectly a subsidiary of such holding company through the interest of such holding company in a subsidiary holding company of the class specified in paragraph (a)(2) of this section; or

(4) A company as to which there is pending an application for an order specified in paragraph (a)(1), (2), or (3) of this section. *Provided,* That such holding company does not have cause to believe that such application was not filed in good faith.

(b) *Subsidiary companies deemed to be included in applications by parent companies under section 2(a)(8).* Every application for exemption filed under section 2(a)(8) (49 Stat. 804; 15 U.S.C. 79b), whether filed before or after the adoption of this section, shall, unless otherwise expressly stated therein, be deemed to be filed on behalf of such applicant and of all subsidiary companies of such applicant, and shall be deemed to include as applicants all such subsidiary companies of such subsidiary company filing such application: *Provided, however,* That the Commission may in any case direct the filing of separate applications by any such companies or may order separate hearings or enter separate or different orders with respect to any such companies so deemed to be included pursuant to this section.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941]

§ 250.11 Certain acquisitions by affiliates exempted from section 9(a)(2).

(a) *Acquisitions by certain exempt holding companies.* Any holding company which is exempt from sections 4 and 5(a) of the Act (49 Stat. 812; 15 U.S.C. 79d, 79e) and which is not a subsidiary of any registered holding company, shall be exempt from section 9(a)(2) (49 Stat. 817; 15 U.S.C. 79i) of the Act with respect to the acquisition of any securities issued by any subsidiary of such exempt holding company.

(b) *Acquisitions by certain exempt holding companies and persons not in registered holding company systems.* Any holding company specified in paragraph (a) of this section and any person which is not a holding company or a subsidiary of any registered holding company, shall be exempt from section 9(a)(2) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any of the following securities:

(1) *Securities issued by certain exempt public utility or holding companies.* Securities issued by any public utility or holding company, which is within the classes specified in § 250.10(a) (1) and (2); or

(2) *Securities of foreign companies.* Securities issued by any company which does not own or operate, or have a subsidiary which owns or operates, any utility assets located in the United States: *Provided,* That the acquiring company is not an affiliate under section 2(a)(11)(A) of the Act (49 Stat. 804; 15 U.S.C. 77b) of any company which owns or operates, and has no subsidiary which owns or operates, any utility assets located in the United States.

(c) *Acquisitions by certain registered holding companies.* The exemptions provided by paragraph (b)(2) of this section shall also apply to any registered holding company which has been exempted from section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) as to the acquisition of the securities therein specified.

(d) *Acquisitions by certain persons of securities issued by affiliates.* Any person which is not a holding company or a

subsidiary of a registered holding company shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of any securities issued by a public utility or holding company of which such person is, prior to such acquisition, an affiliate under section 2(a)(11)(A) of the Act.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 18 FR 6589, Oct. 16, 1953]

§ 250.12 Exemption of certain public utility companies from the definition of subsidiary companies of holding companies.

(a) *Exemption.* If voting securities of a public utility company are owned, controlled or held with power to vote by the trustee or trustees of an inter-vivos or testamentary trust created by an instrument executed prior to January 1, 1935, and if such trust was established for charitable, religious, educational or other nonbusiness purposes, or for the benefit of an individual or individuals, or for more than one of such purposes, and if the beneficial interest or interests in such trust are not represented by transferable certificates, and if such public utility company is not itself a holding company, then such public utility company and any subsidiary companies thereof shall not be deemed to be subsidiary companies of such trustees or trust within the meaning of the act or any rule or regulation thereunder, and such public utility company and any subsidiary companies thereof and such trustees and trust shall be exempt from any provisions of the act other than section 9(a)(2) thereof, from any rules and regulations thereunder and from any obligations, duties and liabilities thereunder to which they might otherwise be subject by reason of the ownership, control or holding with power to vote of such securities by such trustees.

[12 FR 5868, Sept. 2, 1947]

§ 250.14 Exemption of acquisitions of securities of power supply companies from section 9(a)(2) of the Act.

(a) An electric utility company which is not an ''affiliate'' of any other company under clause (B) of section 2(a)(11) shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of any security of a power supply company, either directly or through a wholly-owned company organized solely for that purpose, provided that:

(1) The acquisition of any securities of the power supply company, including its voting securities, and any obligation by such electric utility company to provide funds to the power supply company pursuant to a capital funds agreement or guarantee of its debts, is authorized by a regulatory authority having jurisdiction over the rates and services of such electric utility company;

(2) All of the voting securities of the power supply company are owned by one or more electric utility companies to which the power supply company sells all of its electric energy, or as a transmission company provides all its transmission services to them or their customers (exclusive of any electric energy or transmission services which it sells to or provides to any person described in section 2(c) of the Act or to any rural electric cooperative association); and

(3) The issue of securities by the power supply company (other than any security maturing not more than one year after the date of issue) is subject to express authorization by a regulatory authority having jurisdiction over their issuance.

(b) If the voting securities of the power supply company are acquired by more than one electric utility company, the requirements of this rule shall apply independently to each (except that paragraph (a)(1) shall not apply to any person referred to in section 2(c) of the Act or to any rural electric cooperative association).

(c) *Definitions.* (1) The term *electric utility company*, as used in this rule, includes any person referred to in section 2(c) of the Act.

(2) The term *power supply company* means any company which owns and/or operates facilities for the generation or transmission of electric energy for sale to one or more electric utility companies, together with such other facilities as are incidental and functionally related thereto.

(3) The term *voting security* shall have the same meaning as in section 2(a)(17)

of the Act, including any voting interest that serves the same defined purpose.

[46 FR 5869, Jan. 21, 1981]

§ 250.15 Exemption of holding company and subsidiary companies under section 3(a)(2) of the Act.

(a) When an electric utility company becomes a holding company with respect to one or more power supply companies in a transaction or tranactions exempted under § 250.14, the electric utility company, as such holding company, shall be exempt pursuant to section 3(a)(2) of the Act. If an electric utility company otherwise qualifies for an exemption pursuant to section 3(a)(2) of the Act, either by order or pursuant to § 250.2(a)(2) of these rules, that exemption shall not be affected by an acquisition exempt under § 250.14.

(b) The exemption under paragraph (a) of this section shall apply to an electric utility company whose acquisition, though not subject to section 9(a)(2) of the Act, satisfies all the requirements provided by § 250.14 for an exempt acquisition.

[46 FR 5870, Jan. 21, 1981]

§ 250.16 Exemption of non-utility subsidiaries and affiliates.

(a) Any company, and each affiliate thereof, shall be exempt from all obligations, duties or liabilities imposed upon it by the Act, as a subsidiary company or as an affiliate of a registered holding company or of a subsidiary company thereof, as such terms are respectively defined in sections 2(a)(8)(A) and 2(a)(11) of the Act, if—

(1) Such company is not a public utility company as defined in section 2(a)(5) of the Act;

(2) Such company is or has been organized to engage primarily in the exploration, development, production, manufacture, storage, transportation or supply of natural or synthetic gas;

(3) No more than 50% of its voting securities or other voting interests are owned, directly or indirectly, by one or more registered holding companies; and

(4) The acquisition by the registered holding company or subsidiary thereof of its interest in such company has been approved by the Commission pursuant to sections 9(a)(1) and 10 of the Act and applicable rules thereunder upon a timely application to the Commission.

(b) The exemption provided by this rule shall continue in effect during the pendency of such application. If an acquisition is made subject to Commission approval, the exemption provided by this rule is not terminated if the Commission does not grant its approval. In that event any such acquisition shall be disposed of in accordance with the order of the Commission.

(c) If a registered holding company directly or indirectly acquires any voting securities of such company, or any other voting interest, pursuant to this rule, the holding company shall include as an exhibit to its annual report on Form U5S a copy of the annual report of such company. It may incorporate by reference the annual report such company is required to file pursuant to other statutes administered by the Commission.

NOTE: Exhibits filed under paragraph (c) shall be submitted to the Commission in paper only, whether or not the registrant is otherwise required to file in electronic format. An electronic filer must submit paper exhibits under cover of Form SE (§ 259.603).

(d) This rule does not affect the authority of any agency having jurisdiction over rates with respect to a company exempt under this rule, including authority over affiliate transactions by or with such company pursuant to the laws administered by that agency.

[45 FR 79024, Nov. 28, 1980, as amended at 58 FR 15005, Mar. 18, 1993]

FORMS, PROCEDURE AND ACCOUNTS

§ 250.20 Prescribed forms and amendments.

(a) *General provisions.* (1) Any provision in the rules in this part requiring the filing of any application, declaration, report or other document on a specified form or upon the proper or appropriate form, means that such document shall comply with the requirements of such form and the instructions thereto, as most recently amended by the Commission.

(2) Any application or declaration unless otherwise stated therein shall be

deemed to constitute a request for appropriate Commission authorizations (or exemption) of the proposed transaction or any part thereof, and the Commission may consider the transaction or any part thereof under the appropriate provisions of the act or rules, whether or not such provisions of the act or rules are specifically designated in the application or declaration.

(3) The Commission may for cause shown, authorize a modification of particular requirements with respect to the filing of information or regarding reports or accounts, or the filing of information after the date otherwise required by these rules or by the appropriate form, or may require filing of additional information; such authorization or requirement may be evidenced in any appropriate manner.

(b) *Amendments.* Amendments to any such document, other than amendments to applications or declarations filed on Form U–1, shall comply with the requirements of the original document and shall state the complete text of each item amended. Amendments shall be filed under cover of the form amended, and shall be marked with the suffix ''/A'' to designate the document as an amendment, e.g., ''U–7D/A.''

(c) *Form U–1 (§ 259.101 of this chapter).* Applications and amendments thereto under section 6(b), 9(c)(3) and 10 of the Act and declarations and amendments thereto pursuant to sections 7, 12(b), 12(c), 12(d) or 12(f) of the Act or any rule of the Commission thereunder, shall be filed on Form U–1. Amendments shall be marked either ''U–1/A'' to designate the document as a pre-effective amendment or ''POS AMC'' to designate the document as a post-effective amendment.

(d) *Certificates of notification.* Form U–6B–2 is prescribed for any certificate of notification pursuant to the last sentence of section 6(b) of the Act. Such certificate shall be filed within 10 days after the issuance or sale of any securities exempted from the provisions of section 6(a) by or under the authority of section 6(b) (49 Stat. 814; 15 U.S.C. 79f), which is neither the subject of a declaration or application on Form U–1 nor included within the exemption provided by § 250.48.

(e) *Matters as to which no form is prescribed.* As to any proposed transactions, and any request for an order, for which no form of application is prescribed, applicant shall state the facts relied upon as the basis for any action which the Commission is asked to take, and shall furnish by amendment such other information as the Commission may require.

(f) *Electronic filings.* (1) Electronic filers are subject to Regulation S-T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in Regulation S-T—General Rules for Electronic Filings (§§ 232.10 and 237.302 of this chapter).

[6 FR 2015, Apr. 19, 1941, as amended at 19 FR 5211, Aug. 18, 1954; 58 FR 15005, Mar. 18, 1993]

§ 250.21 Filing of documents.

(a) *General provision.* All documents required to be filed with the Commission shall be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules, such documents shall be deemed to have been filed with the Commission on the date when they are actually received by it.

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder must be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission by direct transmission, via dial-up modem or Internet.

(2) The date of filing of documents shall be determined in the manner set forth in rule 13 of Regulation S-T (§ 232.13 of this chapter).

[6 FR 2015, Apr. 19, 1941, as amended at 58 FR 15005, Mar. 18, 1993; 65 FR 24801, Apr. 27, 2000; 68 FR 25800, May 13, 2003]

§ 250.22 Applications and declarations.

(a) *Joinder.* As far as practicable combined or joint applications or declarations shall be filed with respect to the same or related transactions or where related questions of law or fact are involved, and the Commission will dispose of the matter simultaneously or otherwise as may be appropriate.

(b) *Incorporation by reference.* (1) If any information required to be filed in any application or declaration is contained in any document previously or concurrently filed with the Commission pursuant to any Act administered by it, the application or declaration may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, incorporate such information by exact and specific reference to the filing in which it was physically filed. The Commission may refuse to permit incorporation by reference in any instance where, in its opinion, such incorporation is confusing, misleading or inadequate.

(2) *Electronic filings.* Any application or declaration filed in electronic format may incorporate by reference any information contained in any document previously or concurrently filed with the Commission under any Act administered by it, provided that, if amended, the document or amendment has been filed in accordance with the requirements of rule 102 of Regulation S-T (§ 232.102 of this chapter). Such information shall be incorporated by specific reference to the electronic filing in which it was filed, including the filer's name, the file number, the form type and the date filed.

(c) *Verification.* All applications and declarations shall be appropriately verified by an authorized officer of the applicant of declarant having knowledge of the facts, except as otherwise specifically provided in the applicable form.

(d) *Formal specifications.* All applications, declarations, certificates and statements, and any amendments thereto, shall be filed in triplicate. One copy shall be signed but the other two copies may have facsimile or typed signatures. Applications and declarations, amendments thereto, and where practicable, all papers filed as a part thereof shall be on good quality, unglazed, white paper, no larger than 8½×11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½×11 inches in size. All documents filed shall be bound on the left side in such manner as to leave the reading matter legible, and shall be printed, lithographed, mimeographed, typewritten, or prepared by any process which, in the opinion of the Commission, produces copies suitable for permanent records and microfilming. Irrespective of the process used, all copies of such material shall be clear, easily readable and suitable for repeated photocopying. Debits and credits in financial statements shall be clearly distinguishable as such on photocopies.

(e) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Public Utility Holding Company Act of 1935, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further the total number of pages contained in a numbered original shall be set forth on the first page of the document.

(f) *Proposed notice.* A proposed notice of the proceeding initiated by the filing of an application or a declaration shall accompany each application or declaration as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application or declaration.

(Sec. 19, 48 Stat. 85, as amended, secs. 13, 15, 23, 48 Stat. 894, 895, 901, as amended, sec. 15, 49 Stat. 828, secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173, as amended, secs. 38, 39, 54 Stat. 841; 15 U.S.C. 77s, 78m, 78*o*, 78w, 79*o*, 77eee, 77ggg, 77nnn, 77sss, 80a–37, 80a–38; 15 U.S.C. 79c and 79t (49 Stat. 810, 833); 15 U.S.C. 80w–37, 30c–39 (54 Stat. 841, 342); 15 U.S.C. 80b–3, 80b–4, 80b–11 (54 Stat. 850, 852, 855))

[19 FR 5211, Aug. 18, 1954, as amended at 29 FR 2421, Feb. 13, 1964; 44 FR 4666, Jan. 23, 1979; 47 FR 58238, Dec. 30, 1982; 50 FR 50611, Dec. 11, 1985; 58 FR 15005, Mar. 18, 1993; 60 FR 32825, June 23, 1995]

§ 250.23 Procedure applicable to certain applications and declarations.

(a) *Scope of rule.* The provisions of this section apply to applications under sections 6(b), 9(c)(3) and 10 of the Act (49 Stat. 814, 49 Stat. 817, 49 Stat. 818; 15 U.S.C. 79f, 79i, 79j) or § 250.50 and declarations pursuant to sections 7, 12(b), 12(c), 12(d), and 12(f) of the Act (49 Stat. 815, 49 Stat. 823; 15 U.S.C. 79*g*, 79*l*) and any rule of the Commission thereunder, to declarations under § 250.65, and to declarations regarding proposed accounting entries subject to instruction 8C of the Uniform System of Accounts for Public Utility Holding Companies.

(b) *Designation of filings as applications or declarations.* Any filing as to any matter specified in paragraph (a) of this section shall be designated an application, if filed pursuant to section 6(b), 9(c)(3) or 10 of the Act (49 Stat. 814, 817, 818; 15 U.S.C. 79f, 79i, 79j) or § 250.50, and shall be designated a declaration with respect to any other matter specified in paragraph (a) of this section.

(c) *Effective date.* A declaration or application, which complies with the applicable requirements of the Act and the rules and regulations thereunder, will become effective or be granted respectively by an order to issue upon the expiration of the period prescribed in the notice of filing.

(d) *Effect of order for hearing.* If the Commission deems that a hearing is appropriate in the public interest or the interest of investors or consumers, it will issue an order for hearing thereon, and in that event a declaration or application shall not become effective or be granted except pursuant to further order of the Commission.

(e) *Notice of filing.* The Commission will publish in the FEDERAL REGISTER notice of the filing of a declaration or application, stating the earliest date upon which such declaration or application, as filed or as amended, may be permitted to become effective or be granted. Any interested person may, not later than fifteen days after the publication of such notice or such other date as may be fixed therein, request the Commission in writing that a hearing be held, stating his reasons therefor and the nature of his interest.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941; 28 FR 5664, June 11, 1963; 41 FR 26854, June 30, 1976]

§ 250.24 Terms and conditions applicable to declarations and orders granting applications.

(a) *Certificate required from declarant or applicant.* Within 10 days after the consummation of any transaction regarding which a declaration has become effective or an application has been granted, the declarant or applicant shall certify to the Commission that such transaction has been carried out in accordance with the terms and conditions of and for the purposes represented by the declaration or application, and of any order of the Commission with respect thereto, and except to the extent that the declaration or application specifies that certain steps or transactions therein proposed may be carried out at a later time than the others, the applicant or declarant shall be required to carry out as a single transaction all the steps therein proposed. The foregoing requirement is imposed on each applicant and declarant unless otherwise expressly ordered by the Commission.

(b) *Conditions and restrictions proposed in an application or declaration.* Every order granting an application or making effective a declaration shall, unless otherwise therein expressly stated, impose upon the applicant or declarant the obligation to comply with any restriction or condition which the application or declaration proposes shall be imposed by the Commission in connection therewith.

(c) *Conditions to effectiveness.* Every order granting an application or making effective a declaration shall, unless otherwise expressly ordered, be subject to the following conditions:

(1) *Compliance with declaration or application.* That the transaction proposed shall be carried out in accordance with the terms and conditions of, and for the purposes stated in the declaration or application, and within 60 days after such declaration is effective or application granted, or such earlier or later date as may be designed in such declaration or application.

(2) *State commission action.* That if the transaction is proposed to be carried out in whole or in part pursuant to the express authorization of any State commission, such transaction shall be carried out in accordance with such authorization, and if the same be modified, revoked or otherwise terminated, the effectiveness of the declaration or order granting the application shall be, without further order or the taking of any action by the Commission, revoked and terminated.

(3) *Reservation of jurisdiction.* That the Commission reserves jurisdiction:

(i) To pass upon the terms and conditions of any document which the declaration or application states is to be submitted to the Commission after the effective date of such declaration or application, and to pass upon any modification of the terms and conditions of any document previously submitted to the Commission. Any such document or modification shall, unless otherwise directed by the Commission, be submitted to the Commission, by amendment to the declaration or application, prior to the execution or use thereof.

(ii) To pass upon any matter which the declaration of application proposes shall be subject to future consideration by the Commission. No action shall be taken with respect to any such matter except upon order of the Commission.

(iii) To entertain, at the request of declarant or applicant, such further proceedings and take such further action as may be appropriate regarding any step which may be taken to consummate the proposed transaction.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941]

§ 250.25 Answers.

In any proceeding instituted by the Commission, the Commission may direct that any party respondent shall file an answer to the allegations contained in the order of the Commission initiating such proceeding, or in any statement of facts filed in such proceeding. Unless otherwise directed by the Commission, such answer shall conform to the requirements for answers to pleadings specified in the Federal Rules of Civil Procedure. The Commission recognizes the right of any person directed to file any such answer to set forth therein appropriate reservations of constitutional or other legal rights.

§ 250.26 Financial statement and recordkeeping requirements for registered holding companies and subsidiaries.

(a) Every registered holding company and every subsidiary company thereof:

(1) Shall conform to the requirements of Regulation S-X as to form and content of financial statements; and

(2) Shall make and keep current accounts, books and other records of all of its transactions in sufficient detail to permit examination, audit and verification of the financial statements, schedules and reports it is required to file with the Commission or which it issues to stockholders. Such accounts, books and other records shall be maintained in appropriate form and in sufficient detail to provide all of the information with respect to the business of the company specified by such Commission filing requirements as are in effect when the transactions recorded occur.

(b) Every registered holding company shall identify in its Form U5S the chart of accounts used by it and by each subsidiary company.

(1) The initial identification shall be made in the Form U5S, or a supplement thereto, filed in the year in which the use of such accounts is to begin, or in the year 1975 for charts of accounts already in use or proposed to be used in that year. Subsequent Forms U5S need merely state that no change in the accounts used has occurred, if that is the fact.

(2) A copy of each chart of accounts shall be annexed as an exhibit to the filing in which it is identified, except that it is unnecessary to file a copy of an official chart of accounts which any company subject to this rule is required to use by the Federal Energy Regulatory Commission, a state commission or by § 250.27 or § 250.93 under the Act. A company electing to use a chart of accounts promulgated by the Federal Energy Regulatory Commission also need not file a copy thereof.

(3) An amendment to Form U5S shall be filed as to any modification of such

chart of accounts, except a modification made to an official chart of accounts by the commission which promulgated it. The amendment shall describe the nature, purpose and effect of the proposed modification and the date it is to be placed in effect. It shall be filed at least 30 days prior to its effective date. Unless the Commission directs otherwise, the chart of accounts, as so modified, shall be used thereafter.

(c) Every registered holding company and every subsidiary company thereof shall hereafter follow the equity method of accounting for investments in any subsidiary company.

(1) Each investment shall be recorded at its carrying value heretofore established and the actual cost of investments hereafter made. Each investment shall be periodically adjusted for the proportionate share of earnings or losses or capital changes of the subsidiary company since its acquisition, crediting any dividends received from such subsidiary company.

(2) Every company subject to this rule shall maintain a subaccount to its retained earnings account which shall be periodically debited or credited with its proportionate share of undistributed retained earnings of subsidiary companies.

(3) No company subject to this rule shall declare or pay any dividends or reacquire any of its own securities from or on the basis of any balances recorded in the subaccount referred to in paragraph (c)(2) of this section, except pursuant to a declaration under section 12(c) of the Act.

(d) No registered holding company which is not a public utility company shall dispose, without authorization from the Commission, of any accounts, books, or other records, except pursuant to 17 CFR part 257.

(e) This rule shall not modify or revoke any order of the Commission heretofore entered as to the accounting by any company subject to this rule including any continuing provision as to amortization or other disposition of any item governed thereby.

(f) Nothing in this rule shall relieve any company subject thereto from compliance with the requirements as to recordkeeping and retention that may be prescribed by any other regulatory agency.

(g) Any references in other rules, forms or releases under the Act to the uniform system of accounts shall be hereafter deemed to refer to this rule.

[40 FR 22129, May 21, 1975, as amended at 49 FR 27309, July 3, 1984; 59 FR 21927, Apr. 28, 1994]

§ 250.27 Classification of accounts prescribed for utility companies not already subject thereto.

(a) Every registered holding company and subsidiary thereof, which is a public utility company and which is not required by either the Federal Energy Regulatory Commission or a State commission to conform to a classification of accounts, shall keep its accounts, insofar as it is an electric utility company, in the manner currently prescribed for similar companies by the Federal Energy Regulatory Commission or, and insofar as it is a gas utility company, in the manner currently recommended by the National Association of Railroad and Utilities Commissioners, except any company whose public utility activities are so limited that the application to it of such system of accounts is clearly inappropriate. A company claiming that its activities are thus limited, shall apply to the Commission for written instructions to that effect.

(b) All references, in the systems of accounts made applicable by paragraph (a) of this section, to the authority prescribing the same and to orders and instructions by, and reports to, said authority, shall be deemed to refer to the Securities and Exchange Commission 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.

(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

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

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

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 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

[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).

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 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]

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

(a) *General provisions.* No solicitation of any authorization, regarding any security of a registered holding company or a subsidiary company thereof, 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 an application or declaration filed with the Commission, shall be made except pursuant to a declaration with respect to such solicitation which has become effective in the manner prescribed in paragraph (d) of this section.

(b) *Exceptions*—1) *Solicitations of a limited number.* Paragraph (a) of this section shall not apply to a solicitation of not more than 15 owners of securites or claims (or of such larger number as the Commission for cause shown may, by order, authorize in any case) by any person, either alone or in cooperation or conjunction with others. For the purpose of computing such number of owners, all persons having any legal or

beneficial interest in any specific security or claim shall be counted as only a single owner.

(2) *Depositaries.* Action merely as a depositary or custodian of securities solicited by others shall not be subject to paragraph (a) of this section and the depositary or custodian shall be under no duty to ascertain that there has been compliance with this section by others.

(c) *Contents of declaration.* Every declaration pursuant to this section shall, if in connection with any reorganization, be filed on Form U–R–1. Every other declaration subject to this section may be filed in connection with the appplication or declaration with respect to the proposed transaction, and shall contain, in addition to the information otherwise specified in such application or declaration, copies of any letters of solicitation proposed to be used, copies of all other documents proposed to be transmitted with such letter of solicitation, and a full statement of the manner in which the solicitation is proposed to be made.

(d) *Effective date.* A declaration as to a solicitation in connection with a reorganization shall, unless the Commission shall order a hearing thereon, become effective on (1) the 11th day after the filing thereof, or the 4th day (excluding Saturdays, Sundays and holidays) after the filing of the last amendment thereto, whichever is the later; or (2) such earlier date as the Commission may, upon a showing of unusual circumstances, permit in writing or otherwise; or (3) such later date as declarant may designate in such declaration, in any amendment thereto, or in written notice to the Commission. Any other declaration shall, unless otherwise ordered by the Commission or unless the Commission shall order a hearing thereon, become effective at the same time as the application or declaration with respect to the proposed transaction; post-amendments to such declarations shall become effective on the 4th day (excluding Saturdays, Sundays and holidays) after the filing thereof unless otherwise therein provided or unless an order for hearing is issued by the Commission.

(e) *Order for hearing.* If the Commission shall issue an order for hearing on a declaration under this section, such declaration shall become effective only pursuant to the further order of the Commission and subject to such terms and conditions as the Commission may prescribe.

(f) *Supplementary solicitations.* The text of any supplementary or follow-up letters of solicitation or reports, or statements of account shall be filed as post-amendments to a declaration and shall be subject to the same requirements as other amendments to declarations, except that no declaration or post-amendment need be filed with respect to supplementary or follow-up letters which do not include financial or other information or representations and which merely call attention to prior solicitations and urge action in accordance therewith, or with respect to replies to persons making specific inquiries asking for further explanation as to details of such solicitation.

(g) *Conditions imposed on persons making solicitations.* (1) All persons who make any solicitation subject to this section shall submit, if so directed by the Commission annual reports and statements of accounts to the persons from whom authorizations are procured.

(2) No securities of the company or companies in reorganization, or of any subsidiary of such company, or of any other associate company thereof which may be affected by the reorganization, shall be bought or sold by or for the account of (whether as principal, agent, trustee, or otherwise) any of the persons specified in paragraphs (g)(2) (i) to (v) of this section, or in any transaction in which any such person has any beneficial interest, direct or indirect; nor shall any investment advice with respect to any such securities be given, directly or indirectly, by:

(i) Any person who makes any solicitation subject to this section; or

(ii) Any person connected with any committee or other organization formed to act under the authorization so solicitied; or

(iii) Any company as defined in section 2(a)(2) (49 Stat. 804; 15 U.S.C. 79b) of the act controlled by any person specified in paragraph (g)(2) (i) or (ii) of this section; or

(iv) Any company as so defined of which any person specified in paragraph (g)(2) (i) or (ii) of this section is an officer, director, partner, or employee; or

(v) Any person who is a partner or employer of any person specified in paragraph (g)(2) (i) or (ii) of this section. No person shall make any solicitation subject to this section, or act in connection with any committee or other organization formed to act under the authorization so solicited, in the event of noncompliance with the conditions of paragraph (g)(2) of this section on the part of any such person or of any company having the relation to such person specified in paragraphs (g)(2) (iii) and (iv) of this section, or of any partner or employer of such person.

(h) *Required terms of authorizations.* No authorization shall be solicited in connection with a reorganization unless the document evidencing such authorization:

(1) Provides for compliance by the person soliciting with paragraph (g) of this section; and

(2) Except as otherwise prescribed by order of the Commission, provides for the unconditional right to revoke or cancel the authority granted, without expense, at any time before such authority has been conclusively exercised; and

(3) Except in the case of a document which only evidences consent to or dissent from a specific reorganization plan, provides that no authority is granted with respect to consenting to or dissenting from any reorganization plan.

(i) *Deposits.* No solicitation of deposits of securites shall be made except in accordance with an order of the Commission pursuant to an application showing the necessity for such deposits and of any terms and conditions imposed in the deposit agreement.

(j) *Solicitation of several classes of security holders.* The solicitation of authorizations by one person, group of persons, or committee shall not be made for more than one class of securites without the approval of the Commission, by order upon application, which application shall set forth facts showing that no material conflict of interest exists between the different classes of security holders concerning the subject matter of the solicitation.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 3085, June 25, 1941; 6 FR 5485, Oct. 28, 1941; 10 FR 11283, Sept. 5, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.63 Approval of reorganization fees.

All fees, expenses and remuneration, whether interim or final, to whomsoever paid for services rendered or to be rendered in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary thereof, in any court of the United States, shall be subject to approval by the Commission as to the maximum amount that may be paid for such services. This section shall not apply to any payments approved by a court of the United States. in any proceeding in which 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)).

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

§ 250.64 Scope of applications for approval of reorganization plans.

Any application for approval of a plan of reorganization under section 11 (49 Stat. 820; 15 U.S.C. 79k), or otherwise, shall be deemed to include all applications and declarations under the act which would otherwise be required as to any action necessary to consummate such plan. (See § 250.24(c)(3).)

§ 250.65 Expenditures in connection with solicitation of proxies.

(a) *General provision.* 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, no registered holding company or subsidiary thereof shall expend any money or other consideration in connection with the solicitation of any proxy, consent, or authorization regarding any security of such company.

(b) *Exceptions.* This section shall not apply to:

(1) Ordinary expenditures in connection with preparing, assembling, and mailing proxies, proxy statements, and accompanying data; or

(2) Other expenditures not in excess of $100,000 during any one calendar year.

(c) *Scope of declaration.* A declaration with respect to any matter within the scope of this section shall state the amounts and purposes of the sums proposed to be expended, and set forth any information available to the company as to any contest which has arisen, or may arise, with respect to the subject matter of such solicitation. Any such declaration may be included in any application or declaration filed with the Commission as to any related matter.

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

OFFICERS, DIRECTORS AND REPRESENTATIVES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES[5]

§ 250.70 Exemptions from section 17(c) of the Act.

Notwithstanding the prohibitions contained in section 17(c) of the Act,

(a) A registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the holding company system, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those local commercial banking institutions; and

(2) No more than one director or 25% of the members of the board of directors of the holding company, whichever is greater, is affiliated with the same local commercial banking institution.

(b) A registered holding company may have up to 25% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the holding company system or investment bankers wherever located, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(c) A subsidiary company of a registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary company, *Provided*, That:

(1) Those affiliated persons either do not serve as officers or employees of those local commercial banking institutions or, alternatively, do not serve as officers or employees of the subsidiary company; and

(2) No more than one director or 25% of the members of the board of directors of the subsidiary company, whichever is greater, is affiliated with the same local commercial banking institution.

(d) A subsidiary company of a registered holding company may have up to 25% of the members of its board of

[5] The statements which section 17(a) requires to be filed by officers and directors of registered holding company systems are filed on the forms prescribed under section 16(a) of the Securities Exchange Act of 1934.

directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the subsidiary company or investment bankers wherever located, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(e) An officer of a holding company may serve as a director of a commercial banking institution, *Provided*, That:

(1) The officer of the holding company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the holding company serves as a director of that commercial banking institution.

(f) An officer of a subsidiary company may serve as a director of a commercial banking institution, *Provided*, That:

(1) The officer of the subsidiary company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the subsidiary company serves as a director of that commercial banking institution.

(g) A person serving as an officer or director of a holding company or subsidiary company on April 15, 1986, shall not be disqualified from continuing to serve or from serving successive terms in that capacity solely because of an affiliation with a commercial banking institution or investment banker which existed on that date.

(h) As used in section 17(c) of the Act and in this rule:

(1) An *affiliated person* of a commercial banking institution or investment banker means an officer, director, partner, appointee or representative of that commercial banking institution or investment banker, as well as any person that directly or indirectly owns or holds with power to vote 5 percent or more of the outstanding voting securities of that commercial banking institution or investment banker.

(2) A *commercial banking institution* means any person:

(i) That engages directly or indirectly in the business of a bank, trust company, bank-holding company, banking association or firm; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors, or appointment as officer, of a registered holding company or subsidiary company thereof. The term also excludes any Federal Reserve Bank, savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor.

(3) An *investment banker* means any person:

(i) That engages directly or indirectly in the business of underwriting or dealing in securities that are not exempted from registration under the Securities Act of 1933 by section 3 of that Act; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors of a registered holding company unless those revenues were derived from acting as a managing underwriter for the distribution of securities issued by any company in such holding company system.

(4) A person's gross revenues from its own commercial and investment banking activities and from its ratable share of the commercial banking and investment banking activities of enterprises in which it owns 20 percent or more of the equity interest should be considered in determining the degree to which the person is engaged in such activities.

(5) A *director* means any director of a corporation or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust or other company.

(6) An *officer* means a chairman of the board of directors, chief executive officer, president, vice president, treasurer, secretary, and comptroller, or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust, or other company.

(7) A *managing underwriter* means an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer, organizes the selling efforts, receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting, or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

[51 FR 9003, Mar. 17, 1986]

§ 250.71 Statements to be filed pursuant to section 12(i).

(a) *Ten-day statement.* Any person who engages in any activity within the scope of section 12(i) of the act, shall file with the Commission within 10 days after the date of such activity a statement on Form U–12(I)–A, except as to activity within the scope of any advance statement on Form U–12(I)–B, which is duly filed in accordance with paragraph (b).

(b) *Advance statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year, and the next two calendar years, may be filed on Form U–12(I)–B by any person (whether or not the compensation of such person has been fixed in advance) who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding-company system, or any person specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

(c) *Supplemental statement.* Any person filing an advance statement on Form U–12(I)–B shall file a supplement to such advance statement within 30 days after the end of the period covered thereby, and in no event later than January 30 of the following year, giving the information specified in Items 5 and 6 thereof. Any such person renewing such advance statement may combine the renewal and supplement in the same statement.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941; 59 FR 21928, Apr. 28, 1994]

§ 250.72 Filing of statements pursuant to section 17(a).

(a) The filing of initial statements of beneficial ownership of securities and statements of changes in such beneficial ownership, as prescribed under section 16(a) of the Securities Exchange Act of 1934, shall satisfy the

corresponding requirements of section 17(a) of the Public Utility Holding Company Act of 1935.

(b) The rules under section 16 (a) and (b) of the Securities Exchange Act of 1934, including any rules which exempt a transaction from the duties or liabilities of section 16 (a) or (b), shall apply to any duty or liability imposed with respect to a transaction involving any security of a registered holding company or subsidiary thereof under section 17 (a) or (b) of the Act.

(Sec. 17(a), 49 Stat. 830; 15 U.S.C. 79q)

[26 FR 2466, Mar. 23, 1961, as amended at 46 FR 2036, Jan. 8, 1981; 47 FR 5224, Feb. 4, 1982]

SERVICE, SALES AND CONSTRUCTION CONTRACTS

§ 250.80 Definitions of terms used in rules under section 13.

As used in the rules and regulations under section 13 of the Act (49 Stat. 825; 15 U.S.C. 79m), unless the context otherwise requires:

(a) *Service* means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

(b) *Goods* means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

(c) *Construction* means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

§ 250.81 Exempted transactions.

Unless otherwise expressly provided, the rules, regulations, and orders of the Commission pertaining to the performance of services or construction or the sale of goods shall not be applicable to the sale of water, telephone service, transportation, or a similar commodity or service, the sale of which is normally subject to public regulation, or to the furnishing of services, construction, or goods, to a customer incidentally to such a sale; and such transactions shall be exempt from the provisions of section 13 of the Act (49 Stat. 825; 15 U.S.C. 79m) and the rules and regulations thereunder: *Provided*, That, where any such transaction is with an associate company in its capacity as a consumer, comparable services, construction, or goods are offered to customers other than associate companies on terms which are comparable having due regard to any differences of quality or quantity.

§ 250.82 Temporary exemption from section 13.

(a) Every registered holding company shall be exempt from the provisions of section 13 (49 Stat. 825; 15 U.S.C. 79m) and the rules and regulations adopted thereunder for a period of 30 days after the date when such company shall first become a registered holding company, and every subsidiary of such a registered holding company and every company principally engaged in performing services or construction for, or making sales to, associates of such registered holding company shall likewise be exempt from such provisions for said period: *Provided*, That, during such period, such company shall comply with the provisions of § 250.90 with respect to the performance of services or construction for associate companies on the basis of cost and with the provisions of § 250.92 with respect to sales of goods produced by the seller. As to any company principally engaged in performing services or construction for, or selling goods to, associate companies, such exemption shall expire on the first day of the calendar month immediately succeeding the effective date of such registration unless on and after the first day of such month all accounts and records of such company with respect to such matters shall be maintained in accordance with the provisions of § 250.93 or other rule of the Commission with respect to the accounts and records of mutual service companies and subsidiary service companies.

(b) If, within said period of 30 days after registration of any such holding company, or 30 days after the date of its becoming a holding company in the

event of such company filing a notification prior to becoming a holding company, an application or a declaration pursuant to § 250.88 shall be filed with the Commission by or on behalf of any company desiring to perform services or construction for, or make sales of goods to, associate companies in such holding company system, such applicant or declarant may, to the extent set forth in such document, perform services or construction for, or make sales of goods to, such companies until the Commission shall take final action on such application or declaration: *Provided, however,* That, during such period such applicant or declarant shall comply with all provisions of the act and of the rules and regulations thereunder that would have been applicable to it if the Commission had previously taken favorable action on such application or declaration.

§ 250.83 Exemption in the case of transactions with foreign associates.

(a) Any subsidiary company of a registered holding company, which subsidiary is or is about to become engaged in the performance of any service, sales, or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States, may make application to the Commission for exemption, in whole or in part, from the standards established by section 13(b) of the Act (49 Stat. 825; 15 U.S.C. 79m), and the rules and regulations promulgated thereunder, relating to the performance of any service, sales, or construction contract for such associate companies.

(b) No form is prescribed therefor, but every such application shall comply with the provisions of § 250.20. Every such application shall fully set forth information regarding ownership of security issues, servicing activities of the applicant, and such other data as may be necessary to enable the Commission to determine if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, or for any other reason, such an application for exemption should be granted as necessary or appropriate in the public interest or for the protection of investors.

(c) Upon filing such an application in good faith, the applicant shall be entitled to a temporary exemption from all provisions of section 13(b) of the Act, and the rules and regulations promulgated thereunder, as to which an exemption is sought, pending action by the Commission upon the application.

(d) Any subsidiary company of a registered holding company (including a mutual service company) may perform service, sales, or construction contracts for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States without complying with the standards established by section 13(b) of the Act, and the rules and regulations thereunder, and without the necessity of filing an application for or securing an order of exemption from those standards, so long as the aggregate cost to all such associate companies for services, sales, or construction performed by virtue of the exemption granted by this paragraph (whether performed by one or more subsidiary companies or mutual service companies in the same holding company system) does not exceed $10,000 within any one calendar year.

§ 250.84 Prohibition of unauthorized transactions by registered holding companies.

Except as authorized by rule, regulation, or order of the Commission, no registered holding company shall—whether or not pursuant to a contract heretofore or hereafter entered into—perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so.

§ 250.85 Service, sales, and construction by registered holding companies.

Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable (including § 250.90), a registered holding company may perform services or construction for, or sell goods to, an associate company thereof, which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, and such transaction shall be exempt from the provisions of section 13(a) of the Act (49 Stat. 825; 15 U.S.C. 79m), if:

(a) Such holding company is principally engaged in the business of an operating electric or gas utility company, or any business or businesses other than that of selling goods to associate companies, that of performing services or construction, that of a holding company or fiscal or financial agency of a holding company, or that of an investment company or investment trust; and, incidentally to such business, performs such services or construction or sells such goods; or

(b) Such services, construction, or goods are reasonably required by such associate to meet a break-down or other emergency, and the parties believe in good faith that, under the conditions then existing, such transaction will be to the advantage of such associate; or

(c) Such transaction consists of performance of a contract made before August 26, 1935, for the construction of a specific project, building, or unit, pursuant to which contract substantial expenses were incurred before August 26, 1935; or

(d) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such holding company for its own use; or

(e) Such transaction consists of a sale of goods which is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods; or

(f) Such transaction, although not exempted by any of the foregoing paragraphs of this section, is not in the regular course of business of such holding company and does not involve a cost to the associate of more than $2,500, including the cost of such associate of all previous transactions with such holding company consummated in the same fiscal year which were exempted only by this paragraph.

§ 250.86 Prohibition of unauthorized transactions by subsidiaries.

Except as authorized by rule, regulation, or order of the Commission, no subsidiary company (including a mutual service company) of a registered holding company shall—whether or not pursuant to a contract heretofore or hereafter entered into—perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so.

§ 250.87 Subsidiaries authorized to perform services or construction or to sell goods.

(a) Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable (including § 250.90), the following classes of subsidiary companies of registered holding companies may perform services or construction for, or sell goods to, associate companies thereof:

(1) An approved mutual service company.

(2) A subsidiary company whose organization and conduct of business the Commission has found, pursuant to § 250.88, sufficient to meet the requirements of section 13(b) of the Act.

(3) A subsidiary company which is principally engaged in the business of an operating electric or gas utility company, or any business or businesses other than that of selling goods to associate companies, that of performing services or construction, that of a holding company of fiscal or financing agency of a holding company, or that of an investment company or investment trust; and which, incidentally to such business, performs such services or construction or sells such goods.

(b) Any subsidiary of a registered holding company, whether or not it is a company specified in paragraph (a) (1), (2), or (3) of this section, may perform services or construction for; or

sell goods to, an associate company thereof if:

(1) Such associate company is not an electric or gas utility company and is principally engaged in a business or businesses other than that of a holding company or fiscal or financing agency of a holding company, or that of an investment company or investment trust; or

(2) Such services, construction, or goods are reasonably required by such associate to meet a break-down or other emergency, and the parties believe in good faith that, under the conditions then existing, such transaction will be to the advantage of such associate; or

(3) Such transaction consists of performance of a contract made before August 26, 1935, for the construction of a specific project, building, or unit, pursuant to which contract substantial expenses were incurred before August 26, 1935; or

(4) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such subsidiary company for its own use; or

(5) Such transaction consists of a sale of goods which is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods; or

(6) Such transaction consists of a sale of goods produced by the seller.

(c) This section shall not be applicable to a subsidiary which is itself a registered holding company. Such a company may perform services or construction for, or sell goods to, associate companies as provided in § 250.85.

§ 250.88 Approval of mutual service companies; organization and conduct of business of subsidiary service companies.

(a) Application for approval of a company as a mutual service company shall be filed by the company, or the persons proposing to organize it, with the Commission on Form U–13–1, as specified in the instructions for that form. The Commission will not approve any company as a mutual service company unless it finds that the company is so organized as to capitalization, ownership by, and representation of, member companies, costs, revenues, and the sharing thereof, and other matters as reasonably to insure the efficient and economical performance of services or construction or sale of goods by the company for or to its member companies, at cost fairly and equitably allocated among them and at a reasonable saving over the cost of comparable services or construction performed or goods sold by independent persons.

(b) A finding by the Commission that a subsidiary company of a registered holding company (other than a mutual service company) is so organized and conducted or to be conducted, as to meet the requirements of section 13(b) of the Act (49 Stat. 825; 15 U.S.C. 79m) with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by § 250.90), will be made only pursuant to a declaration filed with the Commission on Form U–13–1, as specified in the instructions for that form, by such company or the persons proposing to organize it.

(c) Within a reasonable time after the filing of an application for approval of a mutual service company, the Commission shall, after notice and opportunity for hearing, enter an order granting or refusing approval or otherwise disposing of the application.

(d) Within a reasonable time after the filing of a declaration with respect to the organization and conduct of business of a subsidiary service company, the Commission shall, after notice and opportunity for hearing, enter an order finding that the company's organization and conduct of business meet the requirements of section 13(b) of the Act, or refusing so to find, or otherwise disposing of the declaration.

(e) Unless the Commission shall otherwise by order provide, the approval of a mutual service company, or the finding that a subsidiary service company's organization and conduct of business are sufficient to meet the requirements of section 13(b) of the Act, shall continue in effect until the Commission, after notice and opportunity for hearing, shall find that the conditions which led to such approval or finding

are not satisfied or shall find that the company in question has persistently violated a provision of section 13 of the Act, or of any rule, regulation, or order of the Commission.

§ 250.89 Termination of contracts.

Every service, sales, or construction contract made after April 1, 1936, between a registered holding company and an associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or between a subsidiary company of a registered holding company (including a mutual service company) and any associate company thereof, shall contain provision for its termination to the extent that performance may conflict with any rule, regulation or order of the Commission adopted before or after the making of such contract.

§ 250.90 Transactions limited to cost.

(a) Except as permitted by this section, or any other appliable rule, regulation, or order of the Commission:

(1) No registered holding company shall perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing service or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and

(2) No subsidiary company of a registered holding company (including a mutual service company) shall perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so, at more than cost as determined pursuant to § 250.91 or any other applicable rule, regulation, or order of the Commission, or in the absence thereof, in accordance with sound methods of determining cost. In the case of a sale of used goods the price shall be not more than cost less depreciation. Any charges on a basis of estimated cost shall be readjusted to actual cost at least annually, if for services or goods, and upon completion of individual projects, in case of construction.

(b) In the case of construction for an associate company of a specific project, building, or unit on which substantial expenses were incurred before August 26, 1935, pursuant to a contract made before that date, the holding company or subsidiary performing the construction shall be entitled to the proportion of its profit or fee earned prior to April 1, 1936.

(c) If a sale of goods is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods, a lump sum price for the entire transaction may include such goods without the assignment of a specific portion of the price to the cost of such goods.

(d) The price of services, construction, or goods need not be limited to cost although the transaction comes within the terms of paragraph (a) of this section if:

(1) Neither the company performing the services or construction, or selling the goods, nor the associate company receiving such services or construction, or buying such goods, is (i) a public utility or holding company, (ii) an investment company or investment trust, including any company or trust which is a medium of investment in securities for the benefit of a registered holding company or its employees or officers, or (iii) a company engaged in the business of selling goods to associate companies or performing services or construction, or (iv) a company controlling, directly or indirectly, any company specified in paragraph (d)(1)(i), (ii), or (iii) of this section; or

(2) Such transaction consists of a sale of goods produced by the seller.

§ 250.91 Determination of cost.

(a) Subject to the provisions of this section and of any other applicable rule, regulation, or order of the Commission, a transaction shall be deemed to be performed at not more than cost if the price (taking into account all charges) does not exceed a fair and equitable allocation of expenses (including the price paid for goods) plus reasonable compensation for necessary capital procured through the issuance

of capital stock (or similar securities of an unincorporated company).

(b) Direct charges shall be made so far as costs can be identified and related to the particular tranactions involved without excessive effort or expense. Other elements of cost, including taxes, interest, other overhead, and compensation for the use of capital procured by the issuance of capital stock (or similar securities of an unincorporated company) shall be fairly and equitably allocated. Interest on borrowed capital and compensation for the use of capital shall represent a reasonable return on only the amount of capital reasonably necessary for the performance of services or construction for, or the selling of goods to, customers for whom transactions are required by the rules of the Commission to be performed at cost. Such amount shall not include the cost of assignment of, or any capitalization of, any service, sales, or construction contract.

(c) Any expense (including the price paid for goods) incurred in a transaction with an associate company of the performing or selling company (directly or through one or more other associate companies thereof), to the extent that it exceeds the cost of such transaction to such associate company, shall not be included in determining cost to such performing or selling company.

(d) Any expense (including the price paid for goods) incurred in a transaction with a person other than an associate company but not at arm's-length, to the extent that it exceeds the expense at which the performing or selling company might reasonably be expected to obtain elsewhere, or to furnish itself, comparable performance, goods, capital, or other items of expense involved (giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price), shall not be included in determining cost to such performing or selling company.

§ 250.92 Sales of goods produced by seller.

(a) No registered holding company shall sell any goods produced by it to any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and,

(b) No subsidiary company of a registered holding company (including a mutual service company) shall sell any goods produced by it to any associate company thereof, or enter into any contract to do so,

at a price which exceeds the price at which the purchaser might reasonably be expected to obtain comparable goods elsewhere, or to furnish them itself, giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price.

§ 250.93 Accounts and records of mutual and subsidiary service companies.

Every mutual service company and every company whose organization and conduct of business the Commission has found, pursuant to § 250.88, to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m) shall keep such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records in such manner and preserve them for such periods, as are prescribed in 17 CFR part 257, and shall keep no other records with respect to the same subject matter except (a) records other than accounts, (b) records required by state law, (c) subaccounts or supporting accounts which are not inconsistent with the accounts required by the Uniform System of Accounts (17 CFR part 256), and (d) such other accounts as may be authorized by the Commission.

(Sec. 15(a) and 20(a), 15 U.S.C. 79o and 79t)

[49 FR 27310, July 3, 1984]

§ 250.94 Annual reports by mutual and subsidiary service companies.

(a) On or before the first day of May in each calendar year, every mutual service company and every subsidiary service company whose organization and method of conducting business the Commission, pursuant to § 250.88, has found sufficient to meet the requirements of section 13(b) (49 Stat. 825; 15

U.S.C. 79m), and every company whose application for approval, or declaration pursuant to §250.88, is pending, shall file with the Commission a report for the prior calendar year, or any portion thereof during which there was effective as to such company any uniform system of accounts prescribed by any rules of the Commission. Every such report shall be submitted on the Form U–13–60 then in effect and shall be prepared in accordance with the instructions incorporated in such form. For appropriate cause shown, the Commission may extend the time within which any such report is to be filed.

(Secs. 13, 15, and 20(a), 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79*o*, 79t)

[45 FR 14548, Mar. 6, 1980, as amended at 61 FR 49961, Sept. 24, 1996]

§ 250.95 Reports required from affiliate service companies and companies principally engaged in performing services.

No affiliate of a registered holding company or subsidiary company thereof shall take any step in the performance of any service or construction for, or any sale of goods to, any company of which it is an affiliate and no company whose principal business is the performance of service or construction for, or sale of goods to, one or more registered holding companies or public utility subsidiary companies thereof, either directly or through one or more other companies, shall take any step in the performance of any such service, construction or sale of goods, unless such affiliate or company:

(a) Has filed with the Commission a report on Form U–13E–1 containing the information prescribed by that form, and

(b) Files with the Commission such information supplementing its report on Form N–13E–1 and regarding its accounts, costs, charges, maintenance of competitive conditions, disclosure of interests, duration of contracts, and other similar matters at such times and in accordance with such forms and instructions as the Commission shall designate. The provisions of this section are not applicable to a company authorized to perform service or construction for, or sell goods to, associate companies by §§250.85, 250.87 or 250.88.

MISCELLANEOUS RULES

§ 250.100 Orders granting[6] or withdrawing exemptions.

(a) *Orders granting exemption from rules.* Any transaction subject to the requirements of any rule promulgated under the act may be exempted therefrom by the Commission upon application, or upon its own motion provided an application for approval of such transaction or a declaration with respect thereto is pending, if it appears to the Commission that such requirements as applied to such transaction are not necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) *Orders withdrawing exemption.* Any unexecuted transaction which is within the exemption provided in any rule from the requirements of any provision of the act or of the rules, may nevertheless be subjected thereto by order, after notice and opportunity for hearing, if it appears to the Commission that the withdrawal of such exemption as applied to such transaction would be appropriate in the public interest or the interest of investors or consumers. The Commission may by such notice suspend the applicability of any such exemption to any transaction pending final determination.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 47 FR 5224, Feb. 4, 1982]

§ 250.101 Standards and interpretations of rules.

All rules shall be construed in the light of, and so as to be consistent with, any applicable requirements of, and standards contained in, the act. Such standards shall be deemed to be incorporated in and a part of every rule.

§ 250.102 Effective date of rules.

Unless the Commission otherwise prescribes in any case, the manner of publication of rules of the Commission shall be by making a copy of such rule or amendment available for public inspection in the office of the Secretary of the Commission, by filing a copy thereof with the Office of the Federal Register, The National Archives, and

[6] See §250.20(a).

by publication in the FEDERAL REGISTER. Rules shall not become effective prior to the effective date therein specified if such date is later than the date of publication. In any case where the method of publication prescribed as to any rule is other than that above specified, such rule shall not be effective as against any person who has not had actual knowledge thereof prior to the filing of a copy thereof with the Office of the Federal Register, and the making available for inspection of such a copy as prescribed in section 7 of the Federal Register Act (49 Stat. 502; U.S.C. 307).

§ 250.103 References and definitions.

As used in the rules in this part, unless the context indicates otherwise:

(a) The term *Commission* means the Securities and Exchange Commission.

(b) The term *act* means the Public Utility Holding Company Act of 1935.

(c) The term *section* refers to a section of the act.

(d) The term *rule* includes *rule* and *regulation*, as those words are used in the Act and refers to the rules prescribed by the Commission pursuant to the Act. All forms and instructions thereto shall be deemed rules and regulations adopted by the Commission pursuant to the Act.

(e) Any definition of a term contained in the act shall be applicable to such term as used in the rules.

(f) The term *parent* or *parent company* of a specified company means a company of which such specified company is a subsidiary, whether by virtue of direct or indirect ownership or control of securities.

(g) The phrase *direct subsidiary* of a specified company means a company of which such specified company itself directly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities, and directly owns a greater percentage of such voting securities than are owned by any other company.

(h) The phrase ''any person having a bona fide interest as used in sections 11(d), 11(f), and 11(g) (49 Stat. 820; 15 U.S.C. 79k), shall, with respect to the reorganization of any company, be deemed to include such company; any creditor or stockholder of such company or any authorized representative thereof; any receiver or trustee of such company; any trustee under an indenture pursuant to which securities of such company are outstanding; any State commission having regulatory jurisdiction over such company; any person authorized to prepare a plan by any court before which a reorganization proceeding is pending; and any other person found by the Commission to have a substantial interest in the reorganization.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 30 FR 4129, Mar. 30, 1965]

§ 250.103A Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, § 249.308a of this chapter, or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided*, That;

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements

of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K and Form 10–KSB; or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information which is disclosed in a document filed with the Commission, in part I of a quarterly report on Form 10–Q and Form 10–QSB or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934 and which relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), ''Management's discussion and analysis of financial condition and results of operations,'' or Item 302 of Regulation S-K (§ 229.302 of this chapter), ''Supplementary financial information,'' or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S-K (§ 229.302 of this chapter).

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter); or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Public Utility Holding Company Act of 1935 and other acts referred to in section 16(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 13991, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11474, Mar. 16, 1982; 47 FR 57915, Dec. 29, 1982]

§ 250.104 Public disclosure of information and objections thereto.

PRELIMINARY NOTE: If any person wishes to object to the public disclosure of any information contained in a filing with the Commission under any provision of the Act then that portion thereof which contains such information shall be submitted in paper format only, whether or not the filer is an electronic filer.

(a) *General provision.* Unless otherwise directed by the Commission, all information contained in any notification, statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies of any or all information filed in connection with or as a part of any of the above documents will be furnished to any person upon request and upon the payment of the charge therefor.

(b) *Confidential treatment.* If any person filing a notification, statement, application, declaration, report, or other

document with the Commission under any provision of the act, or of any rules or order of the Commission thereunder, wishes to object to the public disclosure of any information contained therein, he shall file that portion thereof which contains such information separately from the remainder and shall plainly mark it ''Confidential Treatment''. There shall also be filed with such information written objection to its public disclosure which (1) shall identify that portion of the notification, statement, application, declaration, report or other document to the public disclosure of which objection is made, (2) shall state the reasons why public disclosure thereof is not necessary or appropriate in the public interest or for the protection of investors or consumers, and (3) may request a hearing on the question of public disclosure. Thereafter such information shall not be made available to the public unless and until the Commission so directs.

(c) *Information obtained in the course of examinations, studies, and investigation.* Information or documents obtained by officers or employees of the Commission in the course of any examination, study or investigation pursuant to section 13(g), section 15(f) (49 Stat. 825, 828; 15 U.S.C. 79m, 79o), or paragraph (a) or (d) of section 18 (49 Stat. 831; 15 U.S.C. 79r) shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court, and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this rule.

(d) Any officer or employee who is served with such a subpoena, shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 7036, Sept. 20, 1955; 26 FR 3102, Apr. 12, 1961; 44 FR 50836, Aug. 30, 1979; 53 FR 17459, May 17, 1988; 58 FR 15005, Mar. 18, 1993]

§ 250.105 Disclosure detrimental to the national defense or foreign policy.

(a) Any requirement to the contrary notwithstanding, no notification, statement, application, declaration, report, or other document filed with the Commission shall contain any document or information which, pursuant to Executive order, has been classified by an appropriate department or agency of the United States for protection in the interests of national defense or foreign policy.

(b) Where a document or information is omitted pursuant to paragraph (a) of this section, there shall be filed, in lieu of such document or information, a statement from an appropriate department or agency of the United States to the effect that such document or information has been classified or that the status thereof is awaiting determination. Where a document is omitted pursuant to paragraph (a) of this section, but information relating to the subject matter of such document is nevertheless included in material filed with the Commission pursuant to a determination of an appropriate department or agency of the United States that disclosure of such information would not be contrary to the interests of national defense or foreign policy, a statement from such department or agency to that effect shall be submitted for the information of the Commission. A registrant may rely upon such statement in filing or omitting any document or information to which the statement relates.

(c) The Commission may protect any information in its possession which

may require classification in the interests of national defense or foreign policy pending determination by an appropriate department or agency as to whether such information should be classified.

(d) It shall be the duty of the registrant to submit the documents or information referred to in paragraph (a) of this section to the appropriate department or agency of the United States prior to filing them with the Commission and to obtain and submit to the Commission, at the time of filing such documents or information, or in lieu thereof, as the case may be, the statements from such department or agency required by paragraph (b) of this section. All such statements shall be in writing.

[33 FR 7682, May 24, 1968]

§§ 250.106–250.107 [Reserved]

§ 250.110 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the terms ''small business'' and ''small organization,'' for purposes of the Public Utility Holding Company Act of 1935, shall mean a holding company system whose gross consolidated revenues from sales of electric energy or of natural or manufactured gas distributed at retail for its previous fiscal year did not exceed $1,000,000. There may be excluded from such gross revenues:

(a) Sales or electric energy or natural or manufactured gas to tenants or employees of any operating subsidiary company of such holding company for their own use and not for resale; and

(b) Sales of gas to industrial consumers or in enclosed portable containers.

[47 FR 5222, Feb. 4, 1982]

PART 251—INTERPRETATIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of policy regarding first mortgage bonds subject to the Public Utility Holding Company Act of 1935.	13105	Feb. 16, 1956	21 FR 1286.
Statement of policy regarding preferred stock subject to the Public Utility Holding Company Act of 1935.	13106	Feb. 16, 1956	21 FR 1288.
Opinion and statement of the Commission in regard to proper reporting of deferred income taxes arising from installment sales.	15359	Dec. 7, 1965	30 FR 15420.
Statement of the Commission to clarify the meaning of ''beneficial ownership of securities'' as relates to beneficial ownership of securities held by family members.	15381	Jan. 19, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	15403	Feb. 14, 1966	31 FR 3175.
Statement of the Commission authorizing the adoption of modifications of policies regarding provisions of long-term debt securities issued and sold under the Holding Company Act; 5-year refunding limitation.	16369	May 8, 1969	34 FR 9553.
Conclusion of the Commission that it is appropriate to permit the issuers of preferred stock under the Holding Company Act of 1935 to include a 5-year refunding limitation on all stocks sold on and after June 22, 1970.	16758	June 22, 1970	35 FR 10585.
Announcement by the Commission that no informal exceptions from the requirements (17 CFR 250.50) of competitive bidding will be granted.	16832	Sept. 17, 1970	35 FR 15210.
Publication of the Commission's procedure to be followed if requests are to be net for no action or interpretative letters and responses thereto to be made available for public use.	16972	Jan. 25, 1971	36 FR 2600.
Commission endorses the establishment by all publicly held companies of audit committees composed of outside directors.	17514	Mar. 23, 1972	37 FR 6850.
Commission's statement and policy on misleading pro rata stock distributions to shareholders.	17583	June 1, 1972	37 FR 11559.
Commission's guidelines on independence of certifying accountants; example cases and Commission's conclusions.	17636	July 5, 1972	37 FR 14294.