propeller mounting plate and the washers of the bolt connections. Accomplish this modification in accordance with DG Flugzeugbau Technical Note TN 843/8, dated April 10, 1997.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to DG Flugzeugbau Technical Note TN 843/8 dated April 10, 1997, should be directed to DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

(g) The inspections and replacements required by this AD shall be done in accordance with DG Flugzeugbau Technical Note TN 843/8 dated April 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from DG Flugzeugbau GmbH, P.O. Box 4120, 76625 Bruchsal, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 97–224, dated July 31, 1997.

(h) This amendment (39–10342) becomes effective on May 15, 1998.

Issued in Kansas City, Missouri, on February 6, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3795 Filed 2–25–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26826, File No. S7–11–95]

RIN 3235–AG45

Exemption of Issuance and Sale of Securities by Public Utility and Nonutility Subsidiary Companies of Registered Public Utility Holding Companies; Rescission of Statements of Policy

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52 under the Public Utility Holding Company Act of 1935 (''Act'') to exempt from the requirement of prior Commission approval under the Act the issue and sale of any security by a subsidiary company in a registered holding company system, where the conditions of the rule are otherwise met. The Commission is also amending rule 45 under the Act to conform the exemption from section 12(b) of the Act, which is provided by rule 45, to the exemption from section 6(a), which is provided by rule 52. These amendments are intended to eliminate unnecessary regulatory and paperwork burdens associated with seeking Commission approval for routine financings by companies in registered holding company systems.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, or Martha Cathey Baker, Senior Special Counsel, at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Subject to stated terms and conditions, rule 52 (17 CFR 250.52) under the Act exempts from the requirement of prior Commission approval under section 6(a) of the Act the issuance and sale of certain specified types of securities by a subsidiary of a registered holding company. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) of the Act the acquisition by a company in a registered holding company system of the securities issued by an associate company under the rule. The Commission is amending rule 52 to exempt all types of securities issued and sold by subsidiary companies, subject to the satisfaction of the other conditions of the rule. Additionally, the Commission is adopting a conforming change to rule 45 to exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of debt securities issued by any other subsidiary company, so long as the issuance of the guaranty and the underlying obligation are exempt under rule 52. The Commission is also rescinding the statements of policy with respect to first mortgage bonds and preferred stock (''Statements of Policy'').[1] The Commission proposed these amendments and rescission of the Statements of Policy by release issued on June 20, 1995.[2]

Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain types of securities by subsidiary companies of registered holding companies.[3] The rule also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered system of any securities issued by an associate company under the rule.[4]

---

[1] The Statements of Policy were adopted by the Commission on February 16, 1956 (Holding Co. Act Release Nos. 13105 and 13106) and amended on May 8, 1969 and June 22, 1970 (Holding Co. Act Release Nos. 16369 and 16758, respectively).

[2] Holding Co. Act Release No. 26312 (June 20, 1995), 60 FR 33640 (June 28, 1995) (''Proposing Release'').

[3] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company. Section 6(b) authorizes the Commission to exempt from the requirements of section 6(a):

> The issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company 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.

Congress intended ''to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.'' H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). *See generally* Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52); Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52); and Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995) (further amending rule 52).

[4] Section 9(a)(1) in pertinent part requires prior Commission approval under the standards of section 10 of the Act for an acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

At present, the rule provides a conditional exemption from the requirement of prior Commission approval only with respect to the issue and sale by public utility and certain nonutility subsidiaries of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness. The issue and sale of the securities must be solely for the purpose of financing the business of the issuing subsidiary and, if the issuer is a public utility subsidiary, must be expressly authorized by the relevant state commission. If the issuing subsidiary is an ''energy-related company'' as defined in rule 58 under the Act, it is subject to additional limitations on the amount of securities it may issue to associate companies without Commission approval.[5] Additionally, the interest rate and maturity date of any debt security issued to an associate company must be designed to parallel the effective cost of capital of that associate company. By its terms, rule 52 currently excludes ''any guaranty and other form of assumption of liability on the obligations of another'' from the exemption provided by the rule.

Rule 45 prohibits registered holding companies and their subsidiaries from extending credit to or indemnifying a company in the same holding company system, without filing a declaration and obtaining a Commission order.[6] Rule 45(b) provides limited exceptions from the general provision.

In the Proposing Release, the Commission proposed amendments that would (a) expand the exemption provided by rule 52 to cover all types of securities that may be issued by registered holding company subsidiaries, including guaranties; and (b) conform rule 45 to the proposed amendments to rule 52 so as conditionally to exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of securities issued by any other subsidiary company. The Commission also requested comment on the following issues: (a) Whether interest rate swap agreements and related instruments should be covered by rule 52; (b) whether compliance with rule 52(b)(2)[7] should be required where a nonutility subsidiary of a registered holding company issues a security to an associate nonutility company; (c) whether exemption of nonutility financing should be subject to other limitations based on, for example, capitalization ratios, financial condition, or past losses incurred in connection with nonutility ventures; (d) whether notice of financing transactions by nonutility companies should be required to be submitted to interested state commissions; and (e) whether the Statements of Policy should be rescinded.

The Commission received comments submitted by seven registered holding companies,[8] Wisconsin Energy Corporation (''WEC''),[9] the American Gas Association (''AGA'' and, together with the registered holding companies and WEC, ''Industry Commenters''), and the Council of the City of New Orleans (''New Orleans''). The Industry Commenters generally support adoption of the proposed amendments, which they state would: (a) Reduce unnecessary delays and burdensome administrative costs;[10] (b) provide necessary flexibility to respond to rapidly changing market opportunities and unforeseen events;[11] and (c) improve registered holding companies' competitive position relative to non-registered holding companies.[12]

New Orleans opposes adoption of the proposed amendments. New Orleans states that the proposed amendments would permit system companies to proceed ''in an unregulated environment,'' since ''state commissions may have limits on their authority to act.''[13] New Orleans further states that the amendments, together with then-proposed rule 58, are ''unlawful,'' and goes on to state that the amendments ''do not possess the strong factual basis necessary to support the conclusion that no abuses will occur if [they] are implemented.''[14] New Orleans asks that the Commission either abandon the proposed amendments, reissue them for further comments, or modify them to reflect the Congressional intent that the Commission be responsible for the protection of consumers through review of registered holding company system financings.

A discussion follows of the principal features of the proposed amendments, the specific issues on which the Commission requested comment in the Proposing Release, and other issues raised by commenters.

1. Expansion of Types of Securities Exempt Under Rule 52

As originally adopted, rule 52 exempted the issue and sale of common stock, preferred stock, first mortgage bonds, and general and refunding mortgage bonds by public utility subsidiaries of registered holding companies, subject to various conditions.[15] In 1992, the rule was amended to cover all types of mortgage bonds and notes.[16] Further amendments to rule 52 in 1995 (''1995 Amendments'')[17] broadened the types of securities that may be issued by public utility subsidiaries to include all

Such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new subsidiary of a registered holding company. *See* rule 52(d).

[5] Rule 58, 17 CFR 150.58(a)(1), was proposed concurrently with the proposed amendments to rule 52 and rule 45 that are adopted today. Rule 58 provides that the acquisition by a company in a registered holding company system of securities of an energy-related company, as defined in the rule, does not require prior approval of the Commission, subject to certain conditions and subject to an aggregate investment limitation of the greater of $50 million or 15% of the consolidated capitalization of the registered holding company. When rule 58 was adopted, rules 52 and 45 were amended to conform the exemption for intrasystem financing by nonutility energy-related companies afforded by those rules to the investment limitations in rule 58. *See* Holding Co. Act Release No. 26667 (Feb. 14, 1997), 62 FR 7900 (Feb. 20, 1997) (''Rule 58 Release'').

[6] Rule 45 was adopted under section 12(b), which provides that:

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[7] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[8] The registered holding companies submitting comments were American Electric Power Company, Inc. (''AEP''), Allegheny Power System, Inc. (''Allegheny''), Consolidated Natural Gas Company (''Consolidated''), The Columbia Gas System, Inc. (now Columbia Energy Group) (''Columbia''), General Public Utilities Corporation (now GPU, Inc.) (''GPU''), Northeast Utilities (''Northeast'') and The Southern Company (''Southern'').

[9] WEC is an exempt holding company under section 3(a)(1) of the Act.

[10] Comments of Allegheny, AGA, AEP, Columbia and Southern.

[11] Comments of AEP, AGA, GPU, Northeast and WEC.

[12] Comments of AEP, AGA, GPU, Northeast and WEC.

[13] Comments of New Orleans.

[14] *Id.*

[15] Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990).

[16] Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992).

[17] Holding Co. Act Release No. 26311 (June 20, 1995), 60 FR 33634 (June 28, 1995).

debt securities [18] and expanded the exemption to allow nonutility subsidiaries to issue the securities under the rule. In the Proposing Release, the Commission requested comment on further expansion of rule 52 to include within its exemption all types of securities issued by subsidiaries of registered holding companies, subject to satisfaction of the other conditions of the rule.

The Industry Commenters support expanding the types of securities covered by the exemption, because the expansion gives companies in registered holding company systems the flexibility to raise capital at the lowest possible cost, regardless of the form of security being issued, just as their competitors do.[19] In addition to its more general objections to the proposed amendments, New Orleans is concerned that the amendments will ''facilitate more complex forms of financings of nonutility businesses,'' without any state or federal review of the attendant risks.

In adopting the 1995 Amendments and expanding the exemption under rule 52 to all debt securities, the Commission noted that rule 52, in its then-current form, was of limited use.[20] The Commission stated that permitting utility subsidiaries to issue all types of debt securities under the rule was ''appropriate in view of the continuing requirement of express approval by the [relevant] state commission * * *.'' [21] With respect to the issuance by nonutility subsidiaries of securities, the Commission stated that requiring prior Commission approval was ''no longer necessary'' in view of the extensive reporting requirements required by the Act and other federal securities laws and the level of scrutiny applied to issuances by investors and the financial community.[22]

For similar reasons, the Commission believes it is appropriate to expand the exemption provided by rule 52 to include all types of securities.[23] In the case of public utility subsidiaries, the exemption will continue to be available only if the appropriate state commission has expressly approved the issue and sale and, in this case, any further review by the Commission would only duplicate efforts and unnecessarily delay financing activities. In the case of both public utility and other subsidiaries, the exemption will be available only if the proceeds are used in connection with an existing business. Thus, absent another available exemption, the Commission will continue to review any financing the proceeds of which are used to enter into a new business endeavor, to determine if the standards of the Act have been satisfied. In addition, the Commission will retain jurisdiction over the financing activities of the registered holding company, including any guaranty of obligations of its subsidiaries.

2. Guaranties

Rule 52, in its current form, does not extend to guaranties. The Commission sought comment in 1992 on whether guaranties should be afforded an exemption under the rule, but declined to modify the rule in this respect in the 1995 Amendments.[24] The Proposing Release again requested comment on whether guaranties should be afforded an exemption under the rule.

A guaranty of debt securities issued by another subsidiary company is itself a security under the Act,[25] the issuance and sale of which are subject to the declaration requirement of section 6(a), unless exempted under section 6(b). In addition, the guaranty by a subsidiary company of any obligation of another subsidiary company is subject to section 12(b) and rule 45(a).[26] An agreement to assume joint liability, as co-maker or otherwise, with respect to the indebtedness of another company is the functional equivalent of a guaranty, and is also subject to both sections 6(a) and 12(b).

The Industry Commenters support the proposal to include guaranties and other assumptions of liability in rule 52's exemption.[27] New Orleans opposes extending the exemption in this respect, stating that the proposed rule changes ''will make it difficult to determine the level of corporate financial exposure and the degree of risk associated with nonutility ventures.'' [28] As New Orleans itself notes, however, the rule would preclude utility subsidiaries from assuming liability without state commission authorization.[29] Also, as AEP notes, the risks of nonutility subsidiary activities are imposed on utility associates through the holding company, and the Commission retains its jurisdiction over the exposure of the holding company to these activities.[30]

The reasons stated above for extending rule 52 to all types of securities apply equally to extending the rule's coverage to guaranties. Under the conditions provided in rule 52, the Commission believes it appropriate to exempt guaranties and other assumptions of liabilities from the prior approval requirements of section 6(a).

Rule 45(a), with exceptions not relevant here, also prohibits the issuance of guaranties and similar undertakings by a subsidiary company without the filing of a declaration.[31] A guaranty may be both a security under section 6(a) and an extension of credit under section 12(b). The Commission's view is that any guaranty or similar undertaking should be exempt under rule 45, if the guaranty is itself exempt under rule 52 and it is issued with respect to the security of another subsidiary company that is likewise exempt under rule 52. Otherwise, rule 52 would not effectively exempt the issuance of the guaranty from the requirement of prior Commission approval. Accordingly, the Commission is adopting the proposed amendment to rule 45(b), in substantially the form proposed,[32] to conform the related exemptions.

3. Interest Rate Swaps and Similar Arrangements

In the Proposing Release, the Commission noted that it has exercised jurisdiction under sections 6(a) and 7 of the Act over interest rate swap

---

[18] The 1995 Amendments specifically excluded guaranties from the scope of rule 52, and the issue of whether guaranties should be exempt was reproposed for consideration and comment in the broader context of extending the rule to cover all securities. The subject of guaranties is discussed below.

[19] *See, e.g.*, comments of Consolidated, GPU and WEC.

[20] 60 FR at 33635. For example, the issuance by public utility subsidiary of a registered holding company of a debt instrument other than a mortgage bond or note required prior Commission approval, whether or not such issuance had been explicitly approved by a state commission.

[21] 60 FR at 33635.

[22] 60 FR at 33636.

[23] As amended, rule 52 will exempt the issue of guaranties and certain interest rate swap agreements (*see* the separate discussions of guaranties and derivative instruments below). GPU specifically suggests that partnership and other similar types of interests are a common vehicle for nonutility subsidiary financing and should be exempt under the rule. The Commission's view is that such interests are similar to the types of instruments covered by the definition of a security in section 2(a)(16) of the Act and therefore should be included in the coverage of the rule.

[24] 60 FR at 33635, n.10.

[25] Section 2(a)(16) of the Act (definition of security).

[26] Section 12(a) of the Act prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[27] Comments of Allegheny, Northeast and WEC.

[28] Comments of New Orleans.

[29] *Id.*

[30] Comments of AEP.

[31] At present, rule 45(b)(6) exempts certain guaranties ''in the ordinary course of business.'' The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[32] Minor revisions have been made in the rule as adopted, to clarify that the assumption of liability must be exempt under rule 52 in order for it to be exempt under rule 45(b)(7).

agreements[33] and related instruments,[34] and requested comment on the extent, if any, to which these transactions should be exempt from prior Commission approval under rule 52. All commenters that addressed this issue support exempting swaps under rule 52.[35] Also, Northeast requested that the Commission clarify the basis of its jurisdiction over these transactions and Southern requested that registered holding companies ''be given a fuller opportunity to address the legal basis'' on which jurisdiction rests.

The types of derivative transactions over which the Commission has taken jurisdiction under sections 6(a) and 7 of the Act are swaps that are tied to the interest or dividend rate on a bond, share of preferred stock, or other security issued by a company in a registered holding company system. These types of derivative transactions are typically entered into as a means of reducing the company's capital costs, by trading the interest or dividend rate on an outstanding security for an interest or dividend rate based on current or expected market changes. In entering into the swap transaction, the company accomplishes the same result as it would by issuing a new security bearing the current interest or dividend rate and using the proceeds to refund the outstanding one, without incurring the accompanying issuance costs.

In these limited circumstances, entry into a derivative transaction is the functional equivalent of issuing a new security. As a result, it is consistent with the underlying principles of the Act and the provisions of section 6(b) to exempt these limited types of swaps from the requirement of prior Commission review.[36] Provided that the other conditions of the rule are satisfied,[37] the types of derivative transactions entered into by registered system companies to manage the capital costs associated with their own obligations will be afforded the exemption of rule 52.

Entry by a company in a registered holding company system into derivative transactions not related to outstanding obligations of the company are not intended to be exempted by rule 52. Further, the fact that the limited types of derivative transactions described above are afforded the exemption of the rule is not intended to indicate any position on the issue of whether swaps and other types of derivative instruments would be deemed to be securities for other purposes under the Act, or under the other federal securities laws.[38]

4. Additional Conditions to Exemption

In the Proposing Release, the Commission noted concerns that public utility subsidiaries of registered holding companies and their customers may need protection from the financial effects of financing transactions, particularly in connection with nonutility financing that is not subject to state oversight. Comment was sought on whether additional conditions to exemption should be imposed, in the form of limitations based on capitalization ratios, financial condition, past losses in connection with nonutility ventures, or any other basis.[39]

The Industry Commenters uniformly state that no additional conditions are needed.[40] However, New Orleans states that, if the proposed amendments to rules 52 and 45 are not rejected, additional conditions are necessary to facilitate an accurate determination of the capital structure of public utility subsidiaries and, in turn, the cost of capital of those subsidiaries. Specifically, New Orleans asks the Commission (a) to assure that both the FERC and state commissions have access to the books and records of all registered holding company affiliates and audit authority sufficient to preclude cross-subsidization; and (b) to establish cost allocation rules.[41] Additionally, New Orleans requests that these conditions should include an ''affirmative evaluation of the effects of additional affiliate investments on a utility's cost of capital, capital structure, cost of debt, and debt ratings.''[42]

With respect to the suggestions of New Orleans concerning access to information, the Commission notes that it maintains an ongoing effort to assure that the FERC and relevant state commissions are afforded the opportunity to review relevant information provided to the Commission on various transactions subject to its jurisdiction. Also, as discussed below, the Commission is adopting a requirement that registered holding companies provide notice of certain nonutility financings to state commissions having jurisdiction over the rates charged by the utility associates of the subsidiaries.[43]

Regarding the request by New Orleans for cost allocation rules, the Commission notes that the exemption afforded by rule 52 with respect to intrasystem financings is conditioned on the use of terms that parallel the effective cost of capital of the associate company lender. This provision should serve to avoid any material cross-subsidization of nonutility companies at the expense of public utility subsidiaries and their ratepayers.

The Commission appreciates the need of state commissions to evaluate the effects of investments by a registered holding company in nonutility associates on the cost of capital of a jurisdictional utility associate. However, the Commission believes that the reporting requirements of rule 52, as currently in effect and as amended today, will assist state commissions in guarding against improper increases in the cost of capital as a result of any nonutility financing transactions that directly affect their utility constituents. The Commission agrees with the arguments advanced by the Industry

[33] *See, e.g., South West Electric Power Co.*, Holding Co. Act Release No. 25755 (March 5, 1993); *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25651 (Oct. 8, 1992); *General Public Utilities Corp.*, Holding Co. Act Release No. 25625 (Sept. 10, 1992); *New England Power Co.*, Holding Co. Act Release No. 25592 (July 30, 1992); *New England Energy Inc.*, Holding Co. Act Release No. 25378 (Sept. 19, 1991); *Northeast Utilities*, Holding Co. Act Release No. 25221 (Dec. 21, 1990); and *Georgia Power Co.*, Holding Co. Act Release No. 25197 (Nov. 30, 1990).

[34] These related instruments include products referred to as interest rate caps, floors and collars.

[35] Comments of AGA, Columbia, GPU, Northeast and Southern.

[36] Alternatively, this type of derivative transaction can be viewed as a change in the terms of an existing security.

[37] In the case of public utility subsidiaries of registered holding companies, state commission approval of entry into the derivative will be required in order to qualify for exemption under rule 52(a).

[38] In general, whether a derivative instrument will be determined to be a security under the federal securities laws depends on a number of factors, including the terms of the instrument and the manner in which it is marketed and sold. *See In re BT Securities Corp.*, Securities Exchange Act Release No. 35136 (Dec. 22, 1994).

[39] 60 FR at 33641.

[40] *See, e.g.*, comments of AEP, AGA, Allegheny, Columbia, Consolidated, GPU, Northeast and Southern. These commenters, in support of this view, cite protections provided by: continuing Commission review of holding company financings; state commission review of utility financings; powers of the Federal Energy Regulatory Commission (''FERC'') and state commissions to protect ratepayers in the context of ratemaking; safeguards inherent in the financial markets, including those provided by ratings agencies and securities exchanges; protection of investors through the other securities laws; the routine nature of the transactions that would be exempted; and the limitation on intrasystem ''energy-related'' subsidiary financings in rule 58.

[41] Comments of New Orleans.

[42] *Id.*

[43] In addition, as provided in the Rule 58 Release, each registered holding company is required to provide on Form U–9C–3 extensive financial information to the Commission on investments in nonutility ventures that are exempted from prior Commission approval under rule 58. A copy of that information is required to be filed with each state commission having jurisdiction over the rates charged by the public utility subsidiaries of the registered holding company in question.

Commenters in this regard, and concludes that it is unnecessary to impose additional conditions on the use of the exemption as proposed.

5. Need for ''Mirror Image'' Requirement in Nonutility Financing Transactions

In the Proposing Release, the Commission requested comment on the question of whether compliance with rule 52(b)(2)[44] should be required in situations where a nonutility subsidiary of a registered holding company issues a security that is acquired by another nonutility subsidiary in the same holding company system. All Industry Commenters addressing this issue support an exception from the ''mirror image'' requirement of subsection (b)(2) for this type of transaction, taking the position that financings solely between nonutility associates of a registered holding company pose no risk of cross-subsidization or other issues of protection of ratepayers.[45] The Commission agrees that, absent a guaranty or other involvement by the holding company or its public utility subsidiaries, the costs of these transactions are unlikely to have a direct effect on ratepayers. There is some concern, however, that public utility subsidiaries that have transactional relationships with these nonutility associates may be burdened with financing costs indirectly, and thus adversely affected by the terms of the transactions.[46] Accordingly, the Commission has determined to defer action on the issue and study it further.

6. Notice of Nonutility Financings to State Commissions

The Commission recognizes the need of state commissions, in connection with carrying out their regulatory functions, for information concerning financing transactions involving public utility companies subject to their jurisdiction and other companies (particularly nonutility companies) in the same holding company system. As a result, the Commission also sought comment in the Proposing Release on whether the rules should incorporate any requirements of notice to interested state commissions of the consummation of financing by nonutility subsidiaries of registered holding companies.

New Orleans supports additional disclosure of nonutility financings, stating that information on associate company financing would be appropriate ''to ascertain any at risk companies.'' All Industry Commenters who responded on this issue oppose notifying state commissions of nonutility financings. According to these parties, notices would be unnecessary because state commissions (a) can protect ratepayers through ratemaking proceedings and review of affiliate transactions[47] and (b) already receive ''sufficient information on the financial health of their jurisdictional utilities.''[48] Additionally, two of the Industry Commenters assert that public disclosure could harm legitimate competitive and commercial interests.[49] These commenters recommend that, if any disclosure is required, it be (a) limited to information on sales of securities to affiliates and (b) provided on the Form U–9C–3 that is required in connection with rule 58.[50]

The Commission has previously noted that the ability of state commissions to obtain information about registered holding company activities varies greatly from state to state.[51] The need of state commissions having retail rate jurisdiction over public utility companies for information regarding financing activities of nonutility associate companies of those utility companies, and their potential inability to obtain this information, must be carefully considered.

The Commission believes that delivery to interested state commissions of only the financing information that will have a direct bearing on their jurisdictional public utility companies should be required. Rule 52, as amended today, includes a requirement that copies of each Form U–6B–2 that is filed with the Commission to report an issue of securities by a nonutility company, and the related acquisition by an associate public utility company, must be submitted to each state commission having jurisdiction over the retail rates of the public utility company.[52]

7. Statements of Policy

In the Proposing Release, the Commission noted that the Statements of Policy, promulgated nearly forty years ago to specify the terms to be included in new issues of first mortgage bonds and preferred stock, have not kept pace with changes in the securities markets and hinder the ability of registered companies to raise capital.[53] The proposal to rescind the Statements of Policy met with no opposition from any of the parties submitting comments. For the reasons outlined above and in the Proposing Release, the Commission is rescinding the Statements of Policy.

8. Other Comments

Some Industry Commenters note that rule 42 requires prior Commission approval for intrasystem redemption of securities, notwithstanding that the issuance of these securities could be exempt from prior Commission review under proposed rule 52.[54] These registered holding companies request that rule 42 be amended so that security acquisitions, retirements and redemptions will be exempt from review to the extent the issuance of those securities was exempt under rule 52. While this type of transaction among associate companies raises cross-subsidization issues, the suggestion regarding rule 42 warrants further consideration, particularly in connection with transactions among nonutilities. The Commission anticipates addressing this issue at a later date.

Conclusion

The Commission has carefully reviewed the proposed amendments to rules 52 and 45 in light of the comments received, and has concluded that the proposed amendments are lawful. As amended, rule 52 retains the

[44] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[45] Comments of Consolidated, GPU, Southern and WEC.

[46] *See also* comments of Consolidated (suggesting that consumer interests may be implicated where the financing involves funds ''directly traceable back to the holding company financings'').

[47] Comments of Consolidated and Columbia.

[48] Comments of Columbia.

[49] Comments of Allegheny and Southern.

[50] *See* the Rule 58 Release. The Commission notes that there is some duplication of information between Form U–6B–2 and Form U–9C–3 with respect to reporting financing transactions for energy-related and gas-related companies. Form U–9C–3, however, includes only information relating to these types of companies, not all nonutility subsidiaries of registered holding companies. As a result, it is not an appropriate mechanism for reporting many transactions that are exempt under rule 52.

[51] *See The Regulation of Public-Utility Holding Companies*, Report of the Division of Investment Management, Securities and Exchange Commission (June 1995) (''Report''), at 134–36.

[52] The information on financing transactions contained in Form U–6B–2 is necessarily narrow and relates only to the financing activities of nonutility associate companies. The Commission notes, however, that extensive information on investments in nonutility companies under rule 58 is required to be delivered to interested state commissions. Also, information concerning registered holding company investments in exempt wholesale generators and foreign utility companies is required to be submitted to state commissions pursuant to rule 53. The Commission believes that the aggregation of this information should assist state commissions in the performance of their regulatory duties, and directs the Commission staff to coordinate with state commissions to assure that the information provided to them is sufficient for this purpose.

[53] *See* Report at 51.

[54] Comments of Allegheny, Northeast, and Southern.

requirement that security issuances by utility subsidiaries (including guaranties of obligations of associate companies) be explicitly approved by the state commission having authority over the rates of that utility.[55] Further, the Commission will continue to have jurisdiction to review entry into new nonutility businesses under sections 9(a) and 10 and any related financing of these businesses.[56] In the course of the reviews, interested parties may express their views on the impact of the investments on consumers. As a further protection, both utility and nonutility financing activities remain subject to the ongoing reporting and auditing provisions of the Act. In light of these factors, and considering the need for companies in registered holding company systems to respond to market opportunities in a rapidly changing competitive environment,[57] the Commission finds that a case-by-case review of the issuance of any type of security by subsidiaries of registered holding companies is no longer necessary in the public interest or for the protection of investors or consumers.

The Commission believes that subsidiaries of registered holding companies should be able to engage in routine financings without the regulatory burden of prior Commission authorization where possible without jeopardizing the interests the Act is designed to protect. The rule amendments adopted today are consistent with this objective.

These amended rules are not ''major rules'' within the meaning of 5 U.S.C. 801 *et seq.* They are substantive rules that grant an exemption or relieve restrictions, within the meaning of 5 U.S.C. 553(d)(1), and therefore may become effective immediately.

[55] Columbia requests that the Commission consider not requiring express approval of a security issuance by the relevant state commission where state law exempts the issuance from the need for approval. As stated in the release adopting the 1995 Amendments, it appears that section 6(b) does not offer a basis for this action. 60 FR at 33635.

[56] Entry into many of these new businesses will require case-by-case review and separate Commission authorization. As noted above, however, the Commission recently adopted rule 58, which exempts investment in some new business activities from the requirement of prior Commission review. The Commission has determined, as discussed in the Rule 58 Release, that the activities covered by rule 58 are so closely related to the utility business, that case-by-case review of these investments is no longer required in order to find that the standards of the Act are met.

[57] Noting that certain securities, such as partnership interests, are ''commonplace in the financing of non-utility * * * projects,'' GPU states that having the same ability as non-registered holding company associates to engage in such financings is ''crucial'' to the ability of registered holding company systems to remain competitive. Comments of GPU.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified as follows:

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act of 1935, as amended [15 U.S.C. 79 *et seq.*], together concerning the sale of securities by a subsidiary of a registered holding company, without a filing requirement, will not have a significant impact on a substantial number of small businesses. The reason for this certification is that it does not appear that any small businesses would be affected by the proposed rule amendments.

Dated: June 19, 1995.

Arthur Levitt,

Chairman.

The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Amended rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. There were 150 applications filed in calendar year 1996 by companies in registered holding company systems; in approximately 35 of these applications, specific requests for financing authorization would not have been filed, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $20,000 per application, and related legal, accounting, and management costs. Thus, for 35 applications filed in calendar year 1996, the aggregate savings would have been approximately $700,000. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 1,250 hours per year (approximately ½ staff year). The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security under the rule. It is estimated that approximately one hour will be required to complete each form at an estimated cost of $100 per hour. Assuming 35 financing applications per year, the cost of compliance reporting would approximate $3,500 per year.

Paperwork Reduction Act

These rules are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been submitted to the Office of Management and Budget for approval to use them through September 30, 1998.

Statutory Authority

The Commission is amending rules 45 and 52 under sections 6, 9, 12 and 20 of the Public Utility Holding Company Act of 1935.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons set forth in the preamble, part 250 of chapter II, title 17, of the *Code of Federal Regulations* is amended as follows:

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

1. The authority citation for part 250 continues to read as follows:

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

2. Section 250.45 is amended by adding paragraph (b)(7) to read as follows:

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

* * * * *

(b) *Exceptions.* * * *

(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.

* * * * *

3. Section 250.52 is amended by revising paragraphs (a) and (b), and by adding paragraph (e), to read as follows:

§ 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).

* * * * *

(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.

Dated: February 20, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4855 Filed 2–25–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 202

[Docket No. FR–4106–F–02]

RIN 2502–AG78

Approval of Lending Institutions and Mortgagees Streamlining; Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: On April 24, 1997, HUD issued a final rule that streamlined 24 CFR part 202 and made related changes to other parts of title 24. This document corrects technical errors that appeared in that final rule.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn S. Herbert, Director, Lender Approval and Recertification Division, Room B–133–P3214, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 708–3976. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: As published on April 24, 1997, the final rule contains some technical errors that are in need of correction. In the April 24, 1997 final rule, an amendment was made to § 30.320(k) was in error. The amendment should have been made to current § 30.35(a)(4). In the second sentence of § 202.5(i), a reference was made to ''the mortgagee'' instead of ''the Secretary''. In the third sentence of § 202.7(a), a reference was made to a ''supervised'' lender or mortgagee instead of to a ''nonsupervised'' lender or mortgagee, and a reference to insured loans was inadvertently omitted. In § 202.9(a), a reference to an investing lender was inadvertently omitted

Accordingly, FR Doc. 97–10282, a final rule that amended 24 CFR parts 30 and 202, among other parts, is corrected as follows:

§ 30.320 [Corrected]

1. On page 20081, in the third column, the rule is corrected by removing the amendment to § 30.320, and in lieu of the amendment to § 30.320 revising § 30.35(a)(4) to read:

§ 30.35 Mortgages and lenders.

(a) * * *

(4) Makes a payment that is prohibited under § 202.5(l).

* * * * *

§ 202.5 [Corrected]

2. On page 20084, in the third column, the rule is corrected by removing ''mortgagee'' from the second sentence of § 202.5(i), and adding in its place, ''Secretary''.

3. On page 20085, in the third column, the third sentence of § 202.7(a) is corrected to read:

§ 202.7 Nonsupervised lenders and mortgagees.

(a) * * * A nonsupervised lender or mortgagee may originate, purchase, hold, service or sell insured mortgages, respectively.

* * * * *

4. On page 20086, third column, the third sentence of § 202.9(a) is corrected to read as follows:

§ 202.9 Investing lenders and mortgagees.

(a) * * * An investing lender or mortgagee may not service Title I loans or Title II mortgages without prior approval of the Secretary.

* * * * *

Dated: February 20, 1998.

Camille E. Acevedo,

Assistant General Counsel, Regulations.

[FR Doc. 98–4867 Filed 2–25–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BONHOMME RICHARD (LHD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 8, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate, General, Navy Department,