conducted through the launch service contractor, then the contractor must settle the matter in a reasonable amount, applying any available insurance coverage required by the contract.

(c) If the cognizant launch service contractor finds that the insurance coverage required by the contract has been exhausted, the claim must be given to the NASA contracting officer. The contracting officer must consider any remaining liability as a claim against the United States in accordance with this subpart, the terms of the launch service contract, the Federal Acquisition Regulation (FAR), and the NASA FAR Supplement (NFS). As such, the contracting officer must examine the remaining liability to determine whether the amount claimed is reasonable. For amounts determined to be unreasonable, the contracting officer must refer the claim back to the launch service contractor to conduct further discussions. Ultimately, the contract's disputes clause prescribes procedures for resolving disagreements, if necessary. For amounts determined to be reasonable, the contracting officer must process the claim in accordance with § 1267.109.

§ 1267.107 Evidence and information required from third party claimants.

(a) A third party claimant should, insofar as possible, provide competent evidence to the launch service contractor to substantiate the circumstances alleged to have given rise to the claim and the amount claimed. A third party claimant should obtain supporting statements, repair bills, one or more estimates for repair, and other data, if possible. Documentation from disinterested parties should be obtained whenever possible.

(b) With regard to the amount claimed, a third party claimant must notify the launch service contractor of, and provide information concerning, any money or other property received as damages or compensation, or which the third party claimant may be entitled to receive from other sources by reason of the claimed bodily injury, death, or damage to or loss of real or personal property. These other sources of money, damages, or compensation include, but are not limited to, other launch service contractors, insurers, employers, and persons whose conduct may have caused or contributed to the accident or incident.

(c) A third party claimant must provide an English translation of any supporting document written in a foreign language.

§ 1267.108 Time limitations for third party claims.

(a) Consistent with the time limitation stipulated in 42 U.S.C. 2473(c)(13)(A), to receive consideration in accordance with this part, a third party claimant must file its claim with the launch service contractor within 2 years after the occurrence of the accident or incident out of which the claim arose. If the launch service contractor receives a third party claim within this time period, but after the launch service contract has expired, or if the claim is still pending when the contract expires, the contracting officer will reserve the matter for resolution during final contract closeout.

(b) A third party claimant has properly filed a claim for purposes of paragraph (a) of this section, when the cognizant launch service contractor receives from the claimant, or the claimant's duly authorized agent or legal representative, a written notification and description of the incident or accident giving rise to the claim, accompanied by substantiation of the amount claimed.

§ 1267.109 NASA action on a launch service claim.

(a) The contracting officer must investigate any launch service claim submitted by the launch service contractor. As necessary, the contracting officer may request any NASA office or other Federal agency to assist in the investigation.

(b) The contracting officer must evaluate any launch service claim submitted by a launch service contractor to determine that it is meritorious and reasonable in amount. As part of this evaluation, the contracting officer must verify that the amount requested is over and above any insurance required by the contract and that the launch service contractor or its insurer has, in fact, paid out an amount to the third party claimant equal to the amount of any required insurance coverage.

(c) The NASA General Counsel is NASA's final approving official for claims arising under 42 U.S.C. 2473, in an amount exceeding $25,000. To pay this type of claim from the permanent indefinite judgment fund, however, 31 U.S.C. 1304 requires certification by the Secretary of the Treasury. Accordingly, to facilitate the processing of claims under this part, the contracting officer must forward to the NASA General Counsel the following documentation:

(1) A short and concise statement of the general facts surrounding the launch service claim as a whole;

(2) Copies of all relevant portions of the launch service contract file and the claim file; and

(3) The contracting officer's analysis of the launch service claim and recommendations regarding payment from the permanent indefinite judgment fund.

(d) The NASA General Counsel must fully evaluate and consider any launch service claim forwarded in accordance with paragraph (c) of this section. If the General Counsel deems the claim to be reasonable, the General Counsel will refer the launch service claim to the Secretary of the Treasury for certification and payment from the permanent indefinite judgment fund pursuant to 31 U.S.C. 1304.

§ 1267.110 Confidentiality.

Under the process prescribed in this subpart, NASA officials may gain access to contractor documents and other materials that are privileged, business sensitive, or confidential. In accordance with 18 U.S.C. 1905, NASA officials may not disclose these materials in any manner or to any extent not authorized by law and must take appropriate steps to prevent unauthorized disclosures.

Daniel S. Goldin,

Administrator.

[FR Doc. 99–32591 Filed 12–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–27110; International Series Release No. 1210; File No. S7–30–99]

Registered Public-Utility Holding Companies and Internationalization

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: We are seeking comment on various issues surrounding the acquisition of United States utilities by foreign companies that will register as holding companies following the transaction.

DATES: Comments must be submitted on or before February 4, 2000.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All

comment letters should refer to File No. S7–30–99; include this file number on the subject line if E-mail is used. Anyone can read and copy the comment letters at our Public Reference Room, 450 Fifth Street, NW Washington, DC 20549. Electronically submitted comment letters also will be posted on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine A. Fisher, Assistant Director, or Mark F. Vilardo, Senior Counsel, both at 202/942–0545.

SUPPLEMENTARY INFORMATION: Today we are requesting comment on issues arising under the Act with respect to foreign acquisitions of U.S. utilities.

Table of Contents

I. Executive Summary and Introduction

In 1992, Congress adopted the Energy Policy Act of 1992 [Pub. L. 102–486, 106 Stat. 2776 (1992)] (''Energy Policy Act''). The legislation amended the Public Utility Holding Company Act of 1935 [15 U.S.C. 79(a) *et seq.*] (''Holding Company Act'' or ''Act'') to create two new types of exempt entities, exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''). The legislation was intended to facilitate investments in foreign utilities by U.S. companies.

Just as registered holding companies have pursued investment opportunities abroad, foreign companies are increasingly seeking to enter the utility business in the United States.[1] Recently, two British companies engaged in the utility or energy business, Scottish Power plc (''ScottishPower'') and The National Grid Group plc (''National Grid''), have announced (and, in the case of ScottishPower, completed) plans to acquire U.S. utilities or public-utility holding companies.[2] ScottishPower has registered under the Act and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We will need to address these issues when such transactions are presented to us for any necessary approvals or when the foreign companies register under the Act. We are, therefore, seeking comment from the public relating to these issues.

II. Background

Congress amended the Holding Company Act in 1992 in response to changes in the United States utility industry. As discussed in greater detail below, the Energy Policy Act created new categories of exempt entities and thereby provided greater flexibility for U.S. and foreign companies to acquire EWGs and for U.S. utilities to acquire both EWGs and FUCOs.[3]

The utility business is rapidly evolving into a global industry, with participants seeking multinational investment opportunities. Sweeping political and economic changes worldwide have created a large demand for American utility expertise and significant investment opportunities for United States companies. Registered public utility holding companies have taken advantage of these opportunities. As of December 31, 1998, registered holding companies had invested $8.2 billion in FUCOs and $892 million in domestic and foreign EWGs. Based on publicly reported information, we believe that investments made by exempt holding companies and public utilities not part of a registered or exempt holding company system, are significantly higher.[4] At the same time, foreign energy companies have made significant investments in the United States, primarily through acquisition of electric wholesale generation units which, by virtue of the Energy Policy Act, are exempt from the Act.[5] In this Release, we are requesting comment on issues relating to the acquisition of U.S. utility companies by foreign holding companies.

III. Acquisition of U.S. Utilities by Foreign Companies

In 1994, in recognition of the increasingly international nature of the energy business, we requested public comment on the concept of foreign ownership of U.S. utilities.[6] We asked,

[1] *See infra* note 5.

[2] On December 7, 1998, ScottishPower, an electric, gas and water utility based in the United Kingdom, announced its proposed acquisition of PacifiCorp, a electric utility operating in the western United States, in a share exchange valued at $12.8 billion, including assumed debt. *See ScottishPower Offers $7.8 Billion for PacifiCorp*, Megawatt Daily, Dec. 8, 1998, at 1. On December 14, 1998, National Grid, an electric transmission utility, also based in the U.K., announced its proposed acquisition of New England Electric System (''NEES''), an electric utility operating in the northeast United States, for $3.2 billion in cash. *See* Laura Johannes, *Electric Utility Set to Be Acquired by National Grid*, Wall St. J., Dec. 14, 1998, at A2. In June 1999, the Federal Energy Regulatory Commission (''FERC'') approved each of these transactions. *See* Howard Buskirk, *FERC Approves Foreign Buys of U.S. Utilities*, The Energy Daily, Jun. 17, 1999, at 3. On November 30, 1999, ScottishPower announced that it had completed its acquisition of PacifiCorp. On December 1, 1999, ScottishPower filed with this Commission its Form U5A, notification of registration as a holding company under the Act. National Grid's application concerning its acquisition of NEES is pending at the Commission. *See* Holding Co. Act Release Nos. 27085 and 27086 (Oct. 8, 1999), 64 FR 56236 (Oct. 18, 1999) and 64 FR 56372 (Oct. 19, 1999) (notices of the applications relating to the proposed acquisition of NEES by National Grid and National Grid's financing authorizations). ScottishPower concluded that, under section 9(a) of the Act, it did not require our approval to acquire PacifiCorp. *See infra* note 29 for a discussion of the circumstances under which a utility acquisition requires our approval.

[3] The Energy Policy Act amended the Holding Company Act by, among other things, adding section 33, which addresses acquisition and ownership of FUCOs. In section 33(c)(1), Congress directed the Commission to adopt rules concerning FUCO acquisitions by registered holding companies. *See* 15 U.S.C. 79z–5b(c)(1). Under this directive, the Commission proposed rules 55 and 56 in 1993, but deferred action on those rules in order to consider the comments received on the rules. *See* Holding Company Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993) (proposing release); Holding Company Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993) (adopting certain rules, deferring action on rules 55 and 56). The Commission will consider reproposing rules 55 and 56 in the near future.

[4] As of December 31, 1998, holding companies exempt under rule 2 of the Act had invested $12.3 billion in FUCOs and domestic and foreign EWGs. In addition, domestic energy companies that are not part of either a registered or exempt holding company system have made major investments in FUCOs and EWGs in recent years. For example, in 1995 and 1996, PacifiCorp, a public utility company operating in the western United States, acquired an Australian electric distribution company and an interest in an Australian power plant and mine for a total of $1.7 billion. According to a U.S. Department of Energy report, U.S. energy companies have played ''a major role * * * as investors in the reformed and privatized electricity sectors'' in the United Kingdom, Australia and Argentina. *See* Electricity Reform Abroad and U.S. Investment, Energy Information Administration, September 1997, at v.

[5] In 1998, foreign utilities invested $31.3 billion in the United States. *See Power Legislation; Foreign Companies Acquiring U.S. Utility Systems: Overcoming PUHCA*, Power Economics, March 31, 1999, at p. 23. For example, National Power plc, the U.K.'s largest power generator, has invested over $1.0 billion in U.S. generating facilities and had announced plans to spend an additional $1.6 billion on U.S. generation projects and acquisitions. *See Overseas Investments; National Power Steps Over the Pond*, Power Economics, Nov. 30, 1998, at 5. In addition, British Energy Inc., a British utility, in partnership with PECO Energy Co., an inactive registered holding company, have agreed to buy three of four U.S. nuclear plants that have been put up for sale in the past year. *See* Christopher Palmieri and John Gorham, *Give Me Your Nukes*, Forbes, Sept. 6, 1999, at 124–25. *See also infra* note 37.

[6] *See* Request for Comments on Modernization of the Regulation of Public-Utility Holding

among other things, whether the Holding Company Act permits foreign ownership; what conditions should be placed on foreign ownership; whether there was a national security interest in restricting foreign ownership of U.S. utilities; whether there are difficulties in obtaining information from foreign companies that would support limitations on foreign ownership; and what types of safeguards or limitations on ownership might prevent or minimize such risks.

Most commenters appeared to agree that the Holding Company Act did not, or should not, prohibit foreign ownership of U.S. utilities.[7] Commenters suggested that foreign ownership could bring some advantages to domestic utilities—increased sources of capital (which could reduce the cost of capital) and management experienced in dealing with competitive markets.[8] Commenters agreed that foreign holding companies would and should be subject to the same regulatory requirements as U.S. companies.[9] Local regulators were divided on whether foreign ownership would impede their ability to obtain information relevant to ratemaking.[10]

Since our initial request for comment, there have been significant foreign investments in domestic power projects.[11] The prospect of foreign ownership of significant U.S. utilities is raised by ScottishPower's acquisition of PacifiCorp and National Grid's proposed acquisition of NEES.[12] ScottishPower has registered under the Act, and National Grid has announced its intention to do so. The acquisition of a U.S. utility or holding company by a foreign company and the acquiror's subsequent registration raise a number of interpretative and policy issues under the Act. We think it appropriate, therefore, to renew our request for comment on the issues related to foreign ownership of U.S. utilities.

A. The Legal Framework

Federal law imposes various restrictions on foreign ownership of some significant industries. Some laws specifically restrict foreign ownership.[13] Others provide for ownership subject to certain conditions. The Federal Aviation Act, for example, establishes percentage limitations on board membership and voting interests in determining whether an air carrier is considered a United States citizen.[14]

In contrast, the Holding Company Act is silent concerning foreign ownership of domestic utilities. Nowhere does the Act explicitly require that a holding company be organized under U.S. law.[15] Indeed, we have noted that the Holding Company Act ''contains no prohibition against foreign holding companies as such.'' [16] We have not had occasion, however, at least in recent times, to address the registration under the Act of a foreign holding company.

It appears that Congress, in 1935, did not intend or foresee ownership of a domestic utility by a holding company domiciled outside the United States. The Act places structural and geographic limitations upon public-utility holding company systems. Section 11 of the Act generally limits a registered holding company to ownership of a single ''integrated public-utility system,'' defined in terms of a group of naturally related operating properties. Under section 2(a)(29) of the Act, an integrated public-utility system is ''confined in its operations to a single area or region, in one or more States * * *.'' [17]

For many years, it was generally assumed that the integration provisions of the Act would generally preclude a U.S. registered holding company from owning both domestic and foreign utility properties, especially if the foreign utility operations were located in a country not contiguous to the United States.[18] For virtually identical reasons, the integration provisions were understood to bar a holding company with foreign utility operations from acquiring a U.S. utility.[19]

In 1992, we determined that a U.S. registered holding company could acquire foreign utility properties notwithstanding the integration

Companies, Holding Co. Act Rel. No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[7] Consolidated Natural Gas Company; NEES; Southern Company (''Southern''); Wisconsin Electric Power Company; City of New Orleans; American Gas Association (''AGA''); National Power PLC/American National Power, Inc.; New York State Bar; Yorkshire Electricity Group/ National Grid Company (''Yorkshire''). Only two commenters, the staff of the Michigan Public Service Commission (''MPSC'') and Allegheny Power System (''APS''), suggested that foreign ownership should be prohibited. Comments we received in response to our initial request for comments may be found in File No. S7–32–94.

[8] City of New Orleans; Southern; Yorkshire.

[9] *See, e.g.*, AGA; City of New Orleans.

[10] The MPSC expressed concern that absentee owners may not place sufficient emphasis on service and the public interest, and that access to books and records may be compromised. On the other hand, City of New Orleans stated that foreign ownership would not impair access to relevant books and records.

[11] *See supra* notes 4 and 5.

[12] *See supra* note 2.

[13] *See, e.g.*, 16 U.S.C. 797 (power production on land and water controlled by the U.S. government); 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials); 42 U.S.C. 6508 and 43 U.S.C. 1701 *et seq.* (oil and gas leases within the National Petroleum Reserve).

[14] *See* 49 U.S.C. 1301(16) (air carrier considered U.S.citizen if president and two-thirds of board of directors and other managing officers are U.S. citizens and at least 75% of voting interest is owned or controlled by U.S. citizens).

[15] The key definitions in the Holding Company Act (*e.g.*, ''electric utility company,'' ''gas utility company,'' ''public-utility holding company,'' ''holding company,'' ''holding-company system'') make no reference to a company's domicile. *See, e.g.*, sections 2(a)(3) [15 U.S.C. 79b(a)(3)], 2(a)(4) [15 U.S.C. 79b(a)(4)], 2(a)(5) [15 U.S.C. 79b(a)(5)], 2(a)(7) [15 U.S.C. 79b(a)(7)] and 2(a)(9) [15 U.S.C. 79b(a)(9)] of the Act. Section 5 [15 U.S.C. 79e] of the Act, which sets forth certain procedural requirements for registration under the Act, does not refer to the domicile of the holding company.

Section 4(b) [15 U.S.C. 79d(b)] of the Act does make reference to holding companies' being organized under state law. This section generally requires that a holding company must register with the Commission if any of its securities that were publicly offered after January 1, 1925 are held ''by persons not resident in the State in which such holding company is organized.'' (Section 2(a)(24) of the Act defines the term ''State'' to mean ''any State of the United States or the District of Columbia.'') The legislative history suggests that section 4(b) was included to assure that the Act subjected to federal regulation those companies that might in some way affect interstate commerce, rather than to require that holding companies be organized under state law. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 25:

[Section 4(b)] subjects to Federal jurisdiction those holding companies which, though they may not contemplate new acts in interstate commerce in the immediate future, are nevertheless affected with a national public interest by reason of the fact that they have in the past set in motion through the channels of interstate commerce forces which affect investors throughout the country, which forces are still in operation in more than one State and cannot be effectively dealt with by any State.

[16] Gaz Metropolitain, Inc., Holding Co. Act Rel. No. 26170 (Nov. 23, 1994) (''*Gaz Met*''). In *Gaz Met* we approved the acquisition of a Vermont gas utility by a Canadian gas holding company and granted the holding company an exemption from registration under section 3(a)(5) of the Act. Section 3(a)(5) makes an exemption available to a holding company that ''is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.''

[17] The provisions of section 11(b)(1)(A)–(C) create an exception to the requirement of a single integrated system. Clause B would permit a registered holding company to own, in addition to its primary U.S. integrated system, an additional system located in a contiguous foreign country.

[18] *See, e.g.*, Electric Bond and Share Co., 33 S.E.C. 21 (1952) (''the provisions of Section 11(b)(1) stand in almost every detail as an unyielding barrier'' to the simultaneous holding of large domestic utility operations and utility operations in Cuba, Mexico, Central and South America, China and India). *See also* Report Relating to Intercorporate Relations Between the General Public Utilities Corp. and the Manila Electric Company, S. Rep. 2787, 84th Cong., 2d Sess. (July 25, 1956) (report of Senator Magnuson from the Committee on Interstate and Foreign Commerce to accompany H.R. 10621, a bill to exempt General Public Utilities Corp., a registered holding company, from the provisions of section 11(b)(1) of the Act, under which we had ordered the holding company to divest its Philippine utility subsidiary).

[19] *See Gaz Met, supra* note 16. In *Gaz Met,* we determined that the integration provisions did not bar the Canadian gas holding company from owning a Vermont gas utility.

provision.[20] In that year also, as discussed previously, Congress amended the Holding Company Act to permit the ownership of EWGs and FUCOs—utility properties that would not, when combined with existing utility properties, constitute an integrated system.

Sections 32 and 33 provide that EWGs and FUCOs are not public-utility companies. Thus, the Act's statutory integration provisions, by their terms, are not applicable to these entities. To eliminate any doubt that ownership does not implicate the Act's integration requirements, section 33(c)(3) provides that ownership of a FUCO is considered to be ''consistent with the operation of a single integrated public utility system, within the meaning of section 11 * * *.'' [21] Section 32(h)(1) contains a similar provision for EWGs.

Section 33 is neutral on its face with respect to the ownership of a FUCO by a foreign holding company.[22] It is thus possible to construe section 33(c)(1) to allow a foreign holding company to qualify its foreign utility operations as a FUCO, and the foreign holding company to acquire a U.S. utility without regard to the integration of the foreign and domestic operations. As explained above, the Act would otherwise generally raise significant barriers to an acquisition of U.S. utility properties by a foreign company with existing foreign utility properties.

In adopting the Energy Policy Act, Congress did not address this possibility and therefore may not have intended this interpretation of section 33(c)(1). The legislative history of the Energy Policy Act emphasizes that the legislation was designed to enable U.S. companies to respond to domestic and overseas investment opportunities. Nothing in the legislative history suggests that section 33 was intended to be a vehicle for foreign investment in the United States.

Moreover, although section 33(c)(1) does not expressly preclude foreign holding companies, we do not believe it should be interpreted to permit a foreign holding company to acquire a U.S. utility if doing so would undercut the fundamental purpose of the Act—to protect consumers and investors.[23] We recognize that foreign registered holding companies present novel and important issues. We therefore are soliciting comments generally on the registration and regulation of foreign holding companies. These comments will inform our consideration of rule 55, our consideration of applications and requests for interpretative guidance concerning foreign holding companies and our review, under section 11, of registration statements filed by foreign holding companies. The comments may also suggest an additional rulemaking to address these issues.

B. Areas for Comment

1. General Policies of the Act

The Holding Company Act was intended to address the practices by which small groups of investors, by means of the holding company structure, were able to exploit vast networks of utility companies, to the detriment of utility consumers and other security holders. The specific problems identified by Congress included inadequate disclosure, excessive leverage, abusive affiliate transactions, evasion of state regulation, and the growth and extension of holding companies without regard to the economy of management and operation of system utility companies.[24]

We request comment whether foreign registered holding companies, by virtue of being foreign, are inconsistent with the Holding Company Act's policies. In general, we request comment concerning:

- the effects of foreign ownership on effective Commission regulation;
- the effects of foreign ownership on effective state regulation;
- the effects of foreign ownership on investor protection; and
- the effects of foreign ownership on consumer protection.

In particular, a registered foreign holding company would likely own significant foreign utility operations. The magnitude of these foreign utility operations could be significantly greater than those currently owned by U.S. holding companies; they could be significantly larger than the holding company's U.S. utility system. Will this expose U.S. ratepayers to greater risks? Should newly registered, foreign holding companies' interests in FUCOs and EWGs be ''grandfathered,'' with only post-registration FUCO and EWG investments counted toward the aggregate investment test of rule 53(a)(1)? [25] U.S. holding companies, in seeking authorization to issue securities to finance the acquisition of FUCOs, have represented that they will not seek recovery in rates for any losses, or inadequate returns, on their investments in FUCOs and EWGs. Will foreign holding companies be in a position to make similar undertakings with respect to their FUCO operations?

We also request comments on whether structural safeguards can be developed to limit the risk that financial problems in the holding company's FUCOs will have an adverse effect on U.S. ratepayers and security holders of the holding company's U.S. subsidiaries. For example, would requiring the U.S. utility subsidiary stock to be owned by an intermediate holding company based in the U.S. and organized under state law provide any additional protection to U.S. interests? Would such intermediate holding companies be consistent with the Act's goal of simplifying the corporate structure of holding companies? We are particularly interested in the views of state regulators and consumers concerning the effects of foreign ownership on state regulation and consumer protection.

2. Section 11

Section 11 has been described by the Supreme Court as the ''very heart'' of the Act.[26] In addition to the general requirement that a registered holding company own a single integrated public-utility system, section 11 limits nonutility businesses to those that are

[20] *See* Southern Co., Holding Co. Act Release No. 25639 (Sept. 23, 1992) (authorizing registered holding company to acquire Australian utility operations). We relied upon the second clause of section 10(c)(2), which provides that section 10(c)(2), requiring us to find that an acquisition ''will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system,'' does not apply to an acquisition of a public-utility company operating exclusively outside the United States. In 1992, also, we granted orders of exemption under section 3(b) from all provisions of the Act for two newly formed indirect Australia subsidiaries of SCEcorp, an exempt holding company. *See* SCEcorp., Holding Co. Act Release No. 25564 (June 29, 1992).

[21] Section 11 also provides that any nonutility business owned by a registered holding company be ''reasonably incidental, or economically necessary or appropriate, to the operations of such integrated public utility system * * *.'' Section 33(c)(3) provides that ownership of a FUCO satisfies this standard.

[22] Section 33(a)(1) provides an exemption for a FUCO ''notwithstanding that the [FUCO] may be a subsidiary * * * of a holding company or of a public utility company.'' The nationality of the holding company is not a component of the exemption. Similarly, section 32 allows ownership of a domestic EWG without regard to the owner's nationality.

[23] *See* Crandon v. United States, 494 U.S. 152, 158 (1990) (''In determining the meaning of [a federal] statute, [the court] look[s] not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'') (citations omitted).

[24] Section 1(b) of the Holding Company Act [15 U.S.C. 79a(b)].

[25] Rule 53 provides a partial ''safe harbor'' for EWG financings by registered holding companies. Among other things, in order to qualify for the safe harbor the amount of a registered holding company's aggregate investments in EWGs and FUCOs cannot exceed 50% of the system's consolidated retained earnings. *See* rule 53(a)(1) [17 CFR 250.53(a)(1)].

[26] SEC v. New England Elec. System, 384 U.S. 176, 180 (1966), citing North American Co. v. SEC, 327 U.S. 686, 704 n.14 (1946).

''reasonably incidental, or economically necessary or appropriate'' to system utility operations, on our finding that the nonutility businesses are ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.'' Section 11 further directs us to require the simplification of the corporate structure of registered systems and to ensure that voting power is fairly and equitably distributed among security holders.

The policies underlying section 11 must also enter into our consideration of the acquisition of a U.S. utility by a foreign company. Section 10(c)(1) provides that we cannot approve an acquisition if it would be detrimental to the carrying out of the provisions of section 11. Section 10(c)(2) provides that we must find that the acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system.

Section 10(c)(2) ''make[s] clear that the Commission was not to approve acquisitions of utility securities merely because of the absence of indications of any positive detriment to the carrying out of Section 11.'' [27] What types of direct or indirect benefits should be considered under section 10(c)(2) when a foreign company seeks to acquire a domestic utility? For example, would a domestic public-utility system benefit from an affiliation with a financially stronger foreign holding company, or a foreign company that has experience in operating in competitive markets? Are these benefits a sufficient basis for making the findings required by section 10(c)(2)? Are there other economies and efficiencies that foreign ownership would confer upon a domestic system?

Commenters should specifically address the key goals of an integrated system as reflected in section 2(a)(29)—the ''advantages of localized management, efficient operation, and the effectiveness of regulation * * *.'' [28] Localized management is a particular issue in this context. The advantage of localized management is that policies affecting consumers and local regulators are handled by persons who are intimately familiar with local conditions and are sensitive and responsive to the interests of the community and of consumers. This does not necessarily mean that the directors and officers of the holding company must be permanent residents of the locality. For example, the advantages of localized management can be realized where the authority and responsibility for local policy-making are properly delegated throughout the service territory of the holding company. Would a foreign holding company be able to preserve the advantages of local management?

Section 11 not only addresses the integration of utility properties but also requires us to limit the nonutility businesses of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate to the operations of'' the holding company system. We have interpreted this provision to reflect a Congressional policy against nonutility acquisitions that bear no functional relationship to the core utility business of the registered holding company. We request comments on how this provision should apply with respect to non-utility businesses of a FUCO.

3. Other Standards for Reviewing Acquisitions

Section 9 of the Act provides that, under certain circumstances, the acquisition of a public-utility company or public-utility holding company requires our prior approval.[29] The main purpose of section 9 is to prevent ''the growth and extension of holding companies [that bear] no relation to economy of management and operation or the integration and coordination of related operating properties'' (an abuse that led to enactment of the Holding Company Act).[30] Section 10 of the Act sets forth the standards for reviewing acquisitions. Section 10(b) provides that we shall approve an acquisition unless we affirmatively find that the acquisition will have certain adverse consequences.[31] Section 10(c)(2) provides that we shall not approve an acquisition unless we affirmatively find that the acquisition will ''[tend] towards the economical and the efficient development of an integrated public-utility system.'' Finally, section 10(f) requires us to be satisfied that there is compliance with state law.

We request comments concerning whether the foreign nature of an acquiror raises any particular issues concerning the application of section 10. In addition to the issues relating to section 10(c), we must consider the following issues:

Section 10(b)(1) Will the acquisition tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors, or consumers?

Traditionally, our evaluation of this factor has been informed by federal antitrust policies.[32] Should we weigh concentration of control issues in view of the increasing internationalization of the energy business? Should we continue to rely, where appropriate, upon the findings and requirements of other agencies that address the potential anticompetitive effects of an acquisition?

Section 10(b)(3): Will the acquisition unduly complicate the capital structure of the holding-company system of the applicant or be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system?

We request comments concerning how foreign ownership could ''unduly complicate the capital structure of the holding company system * * *.'' We would, of course, have to consider whether the holding company has

[27] Electric Bond and Share Co., supra note 18, at 31.

[28] Section 2(a)(29) of the Act.

[29] Section 9(a)(1) of the Act requires our prior approval under section 10 of a direct or indirect acquisition by a registered holding company of any securities or utility assets.

Section 9(a)(2) of the Act bars any person who is an affiliate of a public-utility or holding company from becoming an affiliate of any other public-utility company or holding company without our prior approval. Section 2(a)(11)(A) defines an ''affiliate'' of a specified company as ''any person that directly or indirectly owns, controls, or holds with power to vote 5 per centum or more of the outstanding voting securities of such specified company.'' As noted above, a FUCO is not a public-utility company for purposes of the Act.

An entity that has no public utility affiliate may acquire the securities of a single utility without the need to seek or obtain our prior authorization. This acquisition, which is known as a ''first bite,'' would not be subject to section 9(a)(2). For example, ScottishPower concluded that its acquisition of PacifiCorp constituted its ''first bite'' for purposes of section 9(a). *See* PacifiCorp proxy statement, dated May 6, 1999, at 69.

An acquisition of a company having two or more utility subsidiaries, however, would simultaneously involve both a ''first bite'' and a ''second bite'' and so be subject to section 9(a)(2). *See* Coral Petroleum, Inc., Holding Co. Act Release No. 21632 (June 19, 1980).

[30] *See* section 1(b)(4) of the Act.

[31] In addition to the findings discussed below, we must find that the consideration paid in connection with the acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired.

[32] *See, e.g.,* Sempra Energy, Holding Co. Act Release No. 26890 (June 26, 1998) (relying upon findings and remedial measures of the Department of Justice, the FERC and the interested state commission to address potential anticompetitive effects of acquisition); Entergy Corp., Holding Co. Act Release No. 25952 (Dec. 17, 1993) (relying upon hearing records and orders of FERC and state commissions). *See also* Madison Gas and Electric Co. v. SEC, slip op., Dkt. No. 98–1216 (DC Cir. Mar. 16, 1999) (''We have previously observed that the SEC is entitled to 'watchfully' defer to the determinations of other regulatory bodies * * *.'') (citations omitted).

issued stock with special voting rights to any particular group or class.[33] In this regard, we understand that, in connection with certain foreign utility privatization transactions, foreign governments hold special or ''golden'' shares that give them veto rights with respect to certain corporate transactions. We recognize that these shares are intended to protect the foreign government's regulatory interests rather than to create the type of abusive capital structure that led to passage of the Act. Are these types of arrangements inconsistent with the Act?

We would also consider whether foreign law imposed any impediments on our ability to inspect the foreign holding company and its subsidiaries. Such impediments could be detrimental to the public interest, the interests of investors and consumers, and ''the proper functioning of [a] holding-company system.''

4. Substantive Regulation of Foreign Holding Companies

The Holding Company Act imposes a comprehensive federal framework of regulation on registered holding companies. A registered foreign holding company would be subject to this framework to the same degree as a registered domestic company. For example, we must approve:

- issuances and sales of securities; [34]
- certain acquisitions; [35] and
- sales of utility assets.

We also have jurisdiction over intrasystem transactions. For example, section 12 requires our prior approval for a registered holding company or its subsidiary ''to lend or in any manner extend its credit to or indemnify any company in the same holding-company system.'' Section 13 authorizes us to regulate service, sales and construction contracts between operating utilities within a registered system and other companies within the same system and require that such services be performed at cost. Finally, registered holding companies are subject to extensive reporting, recordkeeping and accounting requirements.

Despite our jurisdiction over registered holding companies, the EWGs and FUCOs owned by a foreign registered holding company, like those of a domestic registered holding company, would generally be exempt from the Act. Moreover, a FUCO may issue and acquire securities without our authorization. A registered holding company with large FUCO operations may be able to issue securities through a FUCO to finance other businesses. Does this raise significant policy issues under the Act, even if the holding company's U.S. utilities do not have any liability with respect to those financings?

5. Accounts and Records; Jurisdiction

The Holding Company Act contains a number of provisions designed to prevent companies in registered holding company systems from engaging in abusive affiliate transactions. In order for these provisions to be effective, we were given the authority to monitor intra-system transactions by requiring the making and keeping of holding company system records and mandating that we have access to those records.[36]

We anticipate that we would be able to exercise this authority with respect to foreign registered holding companies. We request any information concerning possible impediments to our exercise of our inspection authority and jurisdiction. Are there difficulties in obtaining information from foreign companies that are inconsistent with regulation under the Holding Company Act? What types of safeguards or limitations on ownership might prevent or minimize such risks?

6. Other Issues

Are there any other policy issues related to foreign acquisitions of U.S. utilities that we should consider? For example, do we need to consider national security interests that would be implicated by a foreign acquisition of a U.S. utility? [37] We note that the President may investigate the national security effects of ''foreign control of persons engaged in interstate commerce in the United States,'' and suspend or prohibit any acquisition, merger, or takeover of such persons in order to protect the national security.[38] United States companies have acquired significant interests in FUCOs over the past several years. Would restrictions on foreign ownership of U.S. utilities be likely to lead to restrictions on investment in FUCOs by U.S. investors?

Dated: December 14, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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[33] *See* section 11(b)(2).

[34] Sections 6 and 7 require our prior approval under specified qualitative standards for most types of securities issuances.

[35] Section 11(b)(1) confines the nonutility businesses of a registered holding company to those that have a functional relationship to its core utility business. Rule 58 under the Act permits a registered holding company to acquire certain types of non-utility businesses without our approval.

[36] *See* section 15 of the Act.

[37] In response to our prior request for comments, APS raised national security concerns. Most of the other commenters did not believe that there were any national security concerns or that any such concerns should be addressed by Congress. Some federal laws specifically restrict foreign ownership of certain regulated entities, while others provide for ownership subject to certain conditions. *See, e.g.*, 42 U.S.C. 2131–2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials). The Nuclear Regulatory Commission (''NRC'') has developed a ''Standard Review Plan'' for use in reviewing nuclear power plant licenses involving foreign interests. *See* Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 FR 5355 (Sept. 28, 1999). The NRC has approved, with certain restrictions on foreign ownership and control, transfers of the operating license for three nuclear power plants. *See NRC Approves AmerGen's Takeover of Clinton Plant*, The Energy Daily, Nov. 30, 1999 (describing transfers of two operating licenses to AmerGen Energy Co., a company jointly owned by PECO Energy Co., an inactive registered holding company, and British Energy Inc., a British utility company), and PacifiCorp (Trojan Nuclear Plant), 64 FR 63060 (Nov. 18, 1999) (NRC order approving transfer of licenses to ScottishPower). *See also supra* note 5.

[38] 50 U.S.C. App. 2170. The President has established the Committee on Foreign Investment in the United States to administer this authority. *See* 31 CFR 800.101, *et seq.*

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIn 1205–AB21

Birth and Adoption Unemployment Compensation; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: This document corrects the preamble to a notice of proposed rulemaking published in the **Federal Register** of December 3, 1999 (64 FR 67971), concerning Birth and Adoption Unemployment Compensation. The preamble to the notice of proposed rulemaking provided only a mailing address to which written comments could be submitted. This correction provides an e-mail address to which comments may be submitted.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–4231, Washington, DC 20210. Telephone: (202) 219–5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219–8506.