and rule 45.[23] Open account advances that do not bear interest are also subject to these provisions.

To facilitate these transactions, the Commission proposed to amend rule 45(b)(4), which exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year, to remove the dollar limitation of the rule.[24] All of the registered holding companies submitting comments support this change. New Orleans proposes that, if rule 45(b)(4) is amended, it should exempt capital contributions or open account advances subject to an aggregate limitation of $1,000,000 per year.

As the Commission noted in the Proposing Release, the legislative history of the Act makes clear that the Congress, while concerned with holding company abuses, recognized that ''[d]own-stream loans * * * may be legitimate sources of credit * * *,'' and concluded that ''the subject is one in which the rule-making power of the Commission is required to meet a host of varying circumstances.'' [25] Capital contributions and open account advances, without interest, are routine transactions which serve to transfer funds from the parent to its subsidiary. The amounts and types of securities issued by any registered holding company, which remain subject to prior approval by the Commission, must be justified by reference to the need for capital infusions by its subsidiaries, both utility and nonutility. Financing requests must be supported by capital budget projections covering the authorization period. The Commission believes that its ability to supervise intrasystem financing through these means will not be compromised by removal of the dollar limitation in rule 45(b)(4). Accordingly, the Commission declines to incorporate an aggregate dollar limitation in the rule as adopted.[26]

4. Issuance of Other Securities

Finally, the Commission sought comment on whether the amendments to rules 45 and 52 should be extended to exempt financing transactions involving other securities, in particular, guaranties of debt securities issued by other subsidiary companies.[27] Because guaranties are securities under the Act,[28] their issuance and sale are subject to the declaration requirement of section 6, unless exempted under section 6(b). At present, rule 52 does not extend to the issuance and sale of guaranties.

In addition, the guaranty by a subsidiary company of debt securities issued by another subsidiary company is subject to section 12(b) and rule 45 thereunder. Rule 45, with exceptions not relevant here, prohibits the issuance of guaranties by a subsidiary company without the filing of a declaration.[29]

As previously indicated, we are publishing a companion release inviting comment on a further amendment to rule 52 to exempt the issuance of all types of securities. Accordingly, there is no need to address guaranties separately at this time.

5. Comments by the City of New Orleans and NARUC

New Orleans opposes any expansion of the exemptions from the Commission's pre-approval requirement for financings provided by rules 45(b)(4) and 52 which, the city contends, would ''widen the existing regulatory gap between federal and state and local regulators.'' [30] New Orleans urges that, if the amendments are adopted, several additional conditions need to be incorporated. Certain of these additional conditions, or limitations on the availability of the exemptions, have been discussed above. New Orleans states that these conditions are generally necessary to protect public utility subsidiaries of registered holding companies and their customers from the financial effects of financing transactions, particularly in the context of nonutility ventures that are not otherwise subject to effective state oversight.

During the notice period inviting comment on the proposed amendments to rules 45(b)(4) and 52, Congress passed the Energy Policy Act of 1992.[31] Title VII of the Energy Policy Act amended the Act to permit investments by registered holding companies in ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), defined in new sections 32 and 33, respectively.[32] Those sections exempt EWGs and FUCOs from all provisions of the Act, including sections 6(a), 7 and 12(b), which would otherwise apply to securities and guaranties issued and sold by such entities. However, these sections do not exempt issuance and sale of securities by a registered holding company in cases where the proceeds will be used for EWG or FUCO investments, and these financing transactions continue to require Commission approval under sections 6(a) and 7. Under section 32, Congress directed the Commission to promulgate rules with respect to actions which would be considered to ''have a substantial adverse impact on the financial integrity of the registered holding company system'' to ensure that actions (*e.g.*, financings, guaranties, etc.) by any registered holding company in respect of EWGs would not have any adverse impact on any utility subsidiary or its customers or on effective state regulation.[33] Similarly, under section 33, Congress directed the Commission to promulgate rules regarding registered holding companies' acquisitions of interests in FUCOs which shall provide for the protection of the customers of associate public utility companies and the financial integrity of the holding company system.[34]

The Commission had not yet initiated the rulemaking effort under new sections 32 and 33 when it proposed the additional amendments to rules 45(b)(4) and 52. In part for that reason, NARUC and New Orleans both urged the Commission to delay any action on the proposed rules pending development of consumer protection measures in the broader context of investments in EWGs and FUCOs, which, for purposes of the

[23] Section 12(b) and rule 45(a) generally require prior Commission approval for a registered holding company or its subsidiary company to ''lend or in any manner extend its credit to or indemnify any company in the same holding-company system.''

[24] Rule 45(b)(4) exempts ''[c]apital contributions or open account advances, without interest, to any subsidiary: *Provided,* That after giving effect to the transaction the total net amount which such subsidiary will have received during the calendar year as a result of such transactions will not exceed $50,000 (after deducting payments during the year regardless of the date of the advances).'' The rule contained the $50,000 limitation when adopted in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941).

[25] S. Rep. No. 621, 74th Cong., 1st Sess. 34–5 (1935).

[26] We also intend to revisit rule 45(b)(4) in the context of any rulemaking on nonutility diversification.

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

[28] See section 2(a)(16) (definition of security).

[29] 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.

[30] New Orleans, Executive Summary, at 4–5.

[31] P.L. 102–486, 106 Stat. 2776 (1992).

[32] An EWG is defined in section 32(a) of the Holding Company Act as any person determined by the Federal Energy Regulatory Commission to be engaged exclusively in the business of owning and/or operating all or part of one or more facilities that are used for the generation of electric energy, exclusively for sale at wholesale or leased to a utility, and selling electric energy at wholesale. A FUCO is defined in section 33(a) as any person that owns or operates facilities outside the United States used for the generation, transmission or distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas, that derives no part of its income from such utility activities in the United States and is not a public utility company operating in the United States, and that provides notice to the Commission.

[33] See section 32(h)(6).

[34] See section 33(c)(1).