

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is requesting comment upon proposed rule 58 and related proposed conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 ("Act"). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of securities of an "energy-related company," as defined in the rule, subject to certain investment limitations and reporting requirements. Rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or any subsidiary of securities of a "gas-related company," as defined in the rule, subject to certain reporting requirements. The proposed rule and related rule amendments will eliminate unnecessary regulatory burdens and paperwork associated with filings by a registered holding company for Commission approval to invest in nonutility businesses that are closely related to a system's core utility business.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6-9, Washington, D.C. 20549. Comment letters should refer to File No. S7-12-95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Sidney L. Cimmert, Senior Special Counsel, Robert P. Wason, Chief Financial Analyst, or Bonnie Wilkinson, Staff Attorney, Office of Public Utility Regulation, all at (202) 942-0545, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 58

would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of any securities of an energy-related company, subject to certain investment limitations and reporting requirements. The proposed rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule, and such other activities as the Commission may, from time to time by order upon application under sections 9(a)(1) and 10, designate as energy-related for purposes of the rule. The exemption provided by the rule would be available only if the aggregate investment by a registered holding company in such energy-related companies does not exceed the greater of \$50 million and 15% of the holding company's consolidated capitalization.

Proposed rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered gas-utility holding company or any subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The proposed rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990, and such other activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and the Gas Related Activities Act, designate as gas-related for purposes of the rule.

The Commission is also proposing amendments to rule 45(b) and rule 52(b) concerning financings by registered holding company system companies: (1) to qualify the exception under rule 45(b) to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to an energy-related subsidiary company; and (2) to qualify the exemption provided by rule 52(b) from the requirement of Commission approval under sections 6(a) and 7 for issuances and sales of securities by energy-related subsidiary companies, in each case to conform the rules to the investment limitations of proposed rule 58.

I. Background

In recent years, the volume of applications by registered holding

companies seeking approval to engage in various nonutility activities that complement, or are natural extensions of, the electric and gas utility businesses has grown dramatically.¹ It is evident from these filings that the utility industry is evolving toward a broadly based energy-related business that is no longer focused solely on the traditional, regulated, production and distribution functions of a utility. Today, almost all utilities engage in a variety of other energy-related activities that involve applications of resources and capabilities developed in the conduct of utility operations. Many involve new uses of skills and experience gained in utility operations, or new uses of utility infrastructure and technology to provide services to utility as well as nonutility customers.

II. Statutory Framework

Section 9(a)(1) of the Act, among other things, requires prior Commission approval under the standards of section 10 for any direct or indirect acquisition by a registered holding company or any subsidiary company of any securities or an interest in a nonutility business. Of interest here, section 10(c)(1) requires that the Commission shall not approve an acquisition that would be detrimental to the carrying out of section 11. Section 11(b)(1), in turn, limits the nonutility activities of a registered holding company to those that are "reasonably incidental, or economically necessary or appropriate" to the company's utility business when the Commission finds such activities to be "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of [the integrated] system." Under the orders of the Commission interpreting section 11(b)(1), a registered holding company may acquire an interest in a nonutility business that has an operating or functional relationship to the utility operations of the holding company system.² The Commission has also approved the acquisition of a nonutility interest that (1) involves the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility

¹ From 1993 through the end of 1994, for example, the Commission reviewed approximately 122 filings under section 10 involving proposals to acquire nonutility interests, usually through investments in nonutility subsidiaries. These filings represented, in staff time, 13,300 hours per year, or 6.5 staff years.

² See *Michigan Consolidated Gas Co.*, 44 S.E.C. 361, 363-65 (1970), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971); *General Public Utilities Corp.*, 32 SEC 807, 839 (1951).