subsidiaries and not readily available to the rest of the public from other sources; (2) generally requires little or no further investment by the holding company; and (3) permits the amortization of product development expenses with little or no risk.[3]

To encourage energy-related activities, Congress has acted to modify the requirements of section 11(b)(1) on several occasions. In 1992, Congress enacted the Gas Related Activities Act of 1990 (''GRAA'')[4] to enable the three gas utility holding companies then registered under the Act to participate on an equal footing with other gas companies in the development of new gas markets.[5] Congress intended to promote competition in the natural gas markets through investment in gas production, transportation, storage, marketing and similar activities.

The GRAA provides that the acquisition by a gas registered company ''of any interest in any natural gas company[6] or any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of [the system's] gas utility companies.''[7] The GRAA further provides that the acquisition by a gas registered company ''of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary as to the proper functioning of the registered holding company system.''[8] All acquisitions made pursuant to the GRAA thus remain subject to approval under sections 9(a)(1) and 10 of the Act, and related financings remain subject to the applicable provisions of the Act.

In addition, free-standing legislation enacted in 1985, 1986 and 1992 addressed the ownership by registered holding companies of interests in qualifying cogeneration facilities and qualifying small power production facilities (collectively, ''QFs''), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), in light of the requirements of section 11(b)(1) of the Act.[9] For purposes of the Act, a QF is a nonutility interest of a registered holding company.[10] The 1985 amendment permitted gas registered holding companies to acquire cogeneration QFs without regard to the requirement of a functional relationship between the QF and the utility business of the registered system.[11] The 1986 legislation provided similar relief to electric registered holding companies.[12] The two amendments thus permitted registered holding companies and their subsidiaries to own cogeneration QFs without regard to location.[13] The 1992 amendment eliminated the distinction made in the earlier amendments between cogeneration QFs and small power production QFs. Thus, registered holding companies and their subsidiary companies may now own both small power production QFs and cogeneration QFs wherever located. As in the case of the GRAA, however, the acquisition of the securities of a QF entity remains subject to approval under sections 9(a)(1) and 10 of the Act, and related financings by a QF subsidiary company remain subject to the applicable provisions of the Act.

Finally, Congress in 1992 enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions.[14] The legislation defines vehicular natural gas as ''natural or manufactured gas that is ultimately used as a fuel in a self-propelled vehicle,'' and provides that a nonutility company that is involved, as a primary business, in the sale of vehicular natural gas, or the manufacture, sale, transport, installation, servicing, or financing of equipment related to the sale for consumption of vehicular gas is a nonutility company for purposes of the Act and may be acquired by a gas registered holding company in any geographic area.[15]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of ''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

[3] See Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (citing CSW Credit, Inc., Holding Co. Act Release No. 24348 (Mar. 18, 1987)).

[4] Pub. L. No. 101–572, 104 Stat. 2810 (codified at 15 U.S.C. § 79k note (1990)).

[5] S. 8367 Cong. Rec. (June 20, 1990). The three gas registered holding companies were Columbia Gas System, Inc. (''Columbia''), Consolidated Natural Gas Company (''CNG'') and National Fuel Gas Company (''NFG'').

[6] ''Natural gas company'' is defined to have the same meaning given such term under the Natural Gas Act, 15 U.S.C. 717(a) *et seq., viz.*, an individual or corporation engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of natural gas for resale.

[7] Section 2(a), GRAA.

[8] Section 2(b), GRAA. Section 2(c) further provides that each determination under section (b) shall be made on a case-by-case basis, not based on any ''preset criteria.'' Section 2(d) provides that ''[n]othing contained herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company.''

[9] PURPA appears generally in 16 U.S.C. 2601 *et seq.* Section 3(18) of the Federal Power Act (''FPA''), as amended by PURPA, defines a cogeneration facility as a facility which produces—(i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A). Section 210 of PURPA encourages energy conservation by directing the Federal Energy Regulatory Commission (''FERC'') to define and to prescribe rules that would exempt so-called ''qualifying'' cogeneration facilities and ''qualifying'' small power production facilities from the FPA, the Act, and certain state laws ''if the [FERC] determines such exemption is necessary to encourage cogeneration and small power production.'' 16 U.S.C. 824a-3(e)(1). The rules adopted by the FERC concerning qualifying facilities require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs. 18 CFR 292.301–308.

[10] Under section 210 of PURPA, a QF is exempt under the Act from the definition of an ''electric utility company'' and is entitled to other benefits under state and federal law.

[11] Pub. L. 99–186, 99 Stat. 1180 (codified at 15 U.S.C. 79k note (1988)).

[12] Pub. L. 99–553, 100 Stat. 3087 (codified at 15 U.S.C. 79k note (1988)).

[13] Neither bill made any allowance, however, for investments in small power production QFs. As a result, acquisitions of such interests remained subject to the section 11(b)(1) requirement of functional relationship. Prior to the 1992 legislation, this requirement barred gas registered holding companies from investing in small power production facilities and limited electric registered holding companies to investments located within the service territory of their utility subsidiaries.

[14] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified at 15 U.S.C. 79b note (1992)).

[15] The legislation also provides that the sale or transportation of vehicular natural gas by a company or its subsidiary shall not be taken into consideration in determining whether, under section 3 of the Act, such company is exempt from registration. *Id.*