

the proposed rule) may now be considered sufficiently related to the core utility business of registered holding companies as not to require the imposition of limitations upon transactions with nonassociates. It is also reasonable to expect that the participation in such activities by registered holding companies, together with exempt holding companies and investor-owned utilities not subject to the Act, will produce benefits to investors, consumers and the public. Further, it does not appear that the participation of registered holding companies will lead to a recurrence of the evils that the Act was intended to address.

IV. Proposed Amendments to Rule 52 and Rule 45

The Commission is also requesting comment on proposed conforming amendments to rules 52 and 45. Financings by registered system companies of the activities of energy-related businesses would be subject to these rules.

Rule 52, as recently amended,⁴⁴ exempts from the requirement of Commission approval under sections 6(a) and 7 the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52 further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary. The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption.⁴⁵ The exemptions under rule 52(b) and 52(d), both currently in effect and as proposed to be amended, are broader than, and thus are inconsistent with, the exemption in proposed rule 58. Accordingly, the Commission proposes to amend rule 52 to conform the limitation of the rule upon the aggregate amount of such securities that may be issued and sold by energy-related subsidiaries and acquired by registered holding companies to the limitation of proposed rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) and rule 45(a) thereunder certain investments by a

registered holding company in its existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4), as recently amended, exempts without limitation any capital contribution or open account advance without interest to a subsidiary company.⁴⁶ For purposes of proposed rule 58, the exemption is over-inclusive. Accordingly, the Commission proposes to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of proposed rule 58.

V. Proposed Quarterly Reports on Form U-9C-3

In recent years, the Commission has formalized the practice of including in its orders approving acquisitions of nonutility interests under section 10 a requirement for the filing of periodic, usually quarterly, reports under rule 24.⁴⁷ These reports typically provide continuous information on authorized business activities, intercompany guaranties and billings, and results of operations. Since these reporting obligations have been imposed on a case-by-case basis, there are instances in which some holding companies now must prepare and file as many as five different periodic reports under rule 24. Proposed Form U-9C-3 would require essentially the same information covered in these reports, and it is intended that a holding company may file a single Form U-9C-3 for all energy-related company subsidiaries in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders. This procedure should lessen the reporting burden for holding companies. Moreover, a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company should be more useful for the state commissions, with which the report must also be filed. The Commission requests comment on the form and content of Form U-9C-3. In particular, the Commission requests comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also notes the need to balance, on the one hand,

the legitimate needs of regulators for information regarding nonutility activities, and, on the other, the needs of registered holding companies to protect from public disclosure commercially and competitively sensitive information. In this respect, the primary regulatory purposes of the report will be to provide financial and other information on transactions between energy-related company subsidiaries and their regulated associate companies. The report does not call for information that would be commercially sensitive, such as the identity of customers or information regarding revenues and earnings derived from specific business ventures. Nevertheless, there may be instances in which a holding company feels the need to claim confidential treatment under rule 104 for some items of information. Reasonable requests for confidential treatment would not be precluded.

VI. Conclusion

The Commission believes that the registered holding-company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage in nonutility activities, through investments in the securities of other companies, that are of the same or similar character or type as those the Commission has allowed in previous cases. The proposed rules are intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits or other restrictions such as have been selectively incorporated into previous orders. The Commission believes that the proposed limitation of rule 58 on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies will assure that financial integrity of a registered holding company system will not be impaired by investments pursuant to the rule. In addition, the proposed reporting requirements should enable the Commission and interested state and local regulators to monitor the financial and other impact of such investments.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment

⁴⁴ See Holding Co. Act Release No. 26311 (June 20, 1995).

⁴⁵ See Holding Co. Act Release No. 26312 (June 20, 1995).

⁴⁶ See Holding Co. Act Release No. 26311 (June 20, 1995).

⁴⁷ See, e.g., Southern Co., Holding Co. Act Release Nos. 26212 (Dec. 30, 1994) and 26221 (Jan. 25, 1995); American Electric Power Co., Holding Co. Act Release No. 26267 (Apr. 5, 1995); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993); Northeast Utilities, Holding Co. Act Release No. 26213 (Dec. 30, 1994).