

Securities and Exchange Commission

§ 250.58

from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings.

(c) An applicant that is unable to satisfy the requirements of paragraphs (a) and (b) of this section must affirmatively demonstrate that the proposed issue and sale of a security to finance the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator:

(1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

(d) The Commission shall issue an order with respect to a proposed transaction under section 32(h)(3) of the Act within 120 days of completion of the record concerning such issue, sale or guarantee.

[58 FR 51504, Oct. 1, 1993]

§ 250.54 Effect of exempt wholesale generators on other transactions.

In determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to exempt wholesale generators or foreign utility companies, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator or a foreign utility company

upon the registered holding company system if § 250.53 (a), (b) and (c) are satisfied.

[58 FR 51505, Oct. 1, 1993]

§ 250.57 Notices and reports to be filed under section 33.

(a) *Notification of Status as Foreign Utility Company.* Form U-57 (§ 259.207 of this chapter), notification of status as a foreign utility company, may be filed by, or on behalf of, an entity that seeks to become a foreign utility company. If the criteria of section 33 of the Act are otherwise met, the entity shall be deemed to be a foreign utility company upon the filing of such form.

(b) *Reporting Requirement for Associate Public-Utility Companies.* A United States public-utility company that is an associate company of a foreign utility company shall file with the Commission a report on Form U-33-S (§ 259.405 of this chapter) on or before May 1 of each year. This requirement shall not apply to public-utility companies that are subsidiaries of a registered holding company or of a holding company that is exempt from registration under section 3(a) (1) or (2) of the Act, pursuant to section 250.2. In addition, a holding company that is exempt from registration by Commission order may file a single Form U-33-S on behalf of all of its public-utility subsidiaries.

[58 FR 51505, Oct. 1, 1993]

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) \$50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual