under section 11(e) of the Act, unless it shall have given at least 10 days' notice to the Commission of its intention to make such sale or other disposition and;

(1) No notice shall have been given to said company by the Commission within said 10 day period that a declaration should be filed with respect to the proposed transaction, or notice shall have been given by the Commission within said 10 day period that no declaration is required; or

(2) A declaration filed by the company with respect to such transaction shall have been permitted to become effective by order of the Commission: *Provided,* That the provisions of this paragraph shall not apply to any transaction as to which a declaration is required under § 250.43(a) (Rule U–43(a)) or paragraph (a) of this section.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15413, Dec. 29, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

(a) *General provision.* No registered holding company or subsidiary company shall, directly or indirectly, lend or in any manner extend its credit to nor indemnify, nor make any donation or capital contribution to, any company in the same holding company system, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exceptions.* The following transactions shall be exempt from the declaration requirements of this section:

(1) A loan or extension of credit involving an acquisition of securities approved by the Commission under section 10 (49 Stat. 818; 15 U.S.C. 79j) or exempt from section 9(a) of the Act by section 9(b)(2) (49 Stat. 817; 15 U.S.C. 79i) thereof or by any rule in this part.

(2) Extensions of credit without interest in connection with service, construction or sales contracts (including sales of materials and supplies) or from sales of electric energy or natural or manufactured gas, or other obligations accruing in the ordinary course of business: *Provided,* That payment is made as soon as reasonably practicable.

(3) Extensions of credit to a subsidiary without interest to meet emergency requirements: *Provided,* That both the borrowing and lending company forthwith join in a statement notifying the Commission of the transaction and agreeing to take such action with respect thereto as the Commission may require.

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided,* That capital contributions or open account advances to any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

(5) Failure to demand or enforce payment with respect to all or part of any obligation which is by its terms payable on demand, or of any security which has matured, if no new agreement is entered into with respect to the terms or conditions of the unpaid balance thereof.

(6) An agreement by a registered holding company or subsidiary company of a registered holding company to guarantee, to assume joint liability, or to act as a surety or as an indemnitor with respect to contingent liabilities or other obligations of a subsidiary of such company, incurred in the ordinary course of such subsidiary's business, if said agreement is in the form of:

(i) A direct guarantee, assumption of liability, surety or indemnification of the subsidiary company's obligations which is required to meet the requirements of federal, state or local law; or

(ii) An indirect guarantee of a subsidiary through a surety or indemnification of one or more surety companies or agencies, which have agreed to provide bonds of the following kinds required by subsidiary companies in the holding-company system:

(A) Court and fiduciary bonds such as appeal bonds, supersedeas bonds, condemnation bonds, or bonds required to free property from attachment or to lift an injuction;

(B) License and permit bonds such as blasting and oversize load permit bonds;

(C) United States, state and local government bonds such as customs bonds, workers' compensation self-insurance bonds, bonds required by the Internal Revenue Services, mineral right-of-way or drilling lease bonds and notary public bonds;

(D) Lost instrument bonds or other bonds which may be necessary or desirable in connection with the processing of securities or any bonds which may be required by a stock exchange on which any security is listed;

(E) Admiralty bonds;

(F) Bonds required for engineering or construction purposes such as bid, performance or payment bonds;

(G) Any other bonds of a similar nature required for routine operational purposes;

Provided, however, That: (*1*) No payment, compensation or other consideration shall be paid or accrue to the parent company in consideration for such guarantee, assumption of liability, surety or indemnification; (*2*) this rule shall not be construed to apply to a direct or indirect guarantee, assumption of liability, surety or indemnification of a subsidiary company's indebtedness for borrowed money; and (*3*) the aggregate of all such direct and indirect guarantees, assumptions of liability, sureties or indemnifications by the parent company, shall not exceed the greater of $50,000,000, or 5 percent of the aggregate amount of the other securities of the company then outstanding, such securities to be valued at (*i*) original principal amount, if there is such a principal amount, and (*ii*) fair market value as of the date of issuance, if there is no such principal amount. Par value stock shall be treated in the same manner as no par value stock, *i.e.*, as stock issued without any principal amount.

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt, and such assumption of liability constitutes the issuance of a security that is exempt, from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) under § 250.52.

(c) A declaration under paragraph (a) of this section shall not be required for the filing of a consolidated tax return by the eligible associate companies in a registered holding company system, or the execution or performance of the agreement referred to herein, if such consolidated tax return is filed pursuant to a tax agreement, in writing, relating to either federal or state taxes, for a term of one or more tax years among the associate companies included in the consolidated return, and the agreement provides for allocation among such associate companies of the liabilities and benefits arising from such consolidated tax return for each tax year in a manner not inconsistent with the following conditions:

(1) Definitions:

Consolidated tax is the aggregate tax liability for a tax year, being the tax shown on the consolidated return and any adjustments thereto thereafter determined. The consolidated tax will be the refund if the consolidated return shows a negative tax.

Corporate tax credit is a negative separate return tax of an associate company for a tax year, equal to the amount by which the consolidated tax is reduced by including a net corporate taxable loss or other net tax benefit of such associate company in the consolidated tax return.

Corporate taxable income is the income or loss of an associate company for a tax year, computed as though such company had filed a separate return on the same basis as used in the consolidated return, except that dividend income from associate companies shall be disregarded, and other intercompany transactions eliminated in the consolidated return shall be given appropriate effect. It shall be further adjusted to allow for applicable rights accrued to the associate company under paragraphs (c) (4) and (5) of this section or under prior rules or orders, on the basis of other tax years, but carryovers or carrybacks shall not be taken into account if the associate company has been paid a corporate tax credit therefor. If an associate company is a member of the registered system's consolidated tax group for only part of a tax year, that period will be deemed to be its tax year for all purposes under paragraph (c) of this section.

Separate return tax is the tax on the corporate taxable income of an associate company computed as though such company were not a member of a consolidated group.

(2) The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

(3) The tax agreement shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c) (2)(i) or (2)(ii) of this section if the sum of the corporate taxable incomes or separate return taxes of all members of the group in any taxable year differs from the consolidated taxable income or tax because of intercompany transactions excluded from the consolidated return. It shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustments will be directed to allocating to the individual members of the group the material effects of any particular features of the tax law applicable to them.

(4) The tax agreement may exclude from the allocation under paragraph (c)(2)(i) of this section associate companies not having a positive corporate taxable income for the year being allocated, or under paragraph (c)(2)(ii) of this section associate companies not having a positive separate return tax for the year being allocated. An agreement under this paragraph shall make appropriate and equitable provision for preserving to each subsidiary company so excluded the equivalent of any rights which such company would have had, under the applicable tax law, had it filed a separate return, to use in other years any loss or credit availed of by the group through the consolidated return. With respect to carryover rights, such provisions will normally consist of recognition of the carryover in future allocations by reducing the consolidated tax allocation in the subsequent year of the subsidiary company entitled to the benefit, and by charging the excess to the companies which had benefited by the prior deduction or credit. In the case of a carryback, the excluded subsidiary company should normally be paid the amount of refund to which it would have been entitled had it filed a separate return.

(5) The agreement may, instead of excluding members as provided in paragraph (c)(4), include all members of the group in the tax allocation, recognizing negative corporate taxable income or a negative corporate tax, according to the allocation method chosen. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits. The agreement shall provide a method for apportioning such payments, and for carrying over uncompensated benefits, if the consolidated loss is too large to be used in full. Such method may assign priorities to specified kinds of benefits.

(6) The tax agreement for each taxable year shall be filed as an exhibit to the system's annual report on Form U5S (§ 259.5s of this chapter) for the previous taxable year. The initial filing after the effective date of this amendment shall be made as an amendment to the last Form U5S filed. If an existing tax agreement is merely renewed or amended, prior filings may be incorporated by reference. Amendments to a tax agreement shall be filed as an amendment to the Form U5S. Any amendment which would alter the allocation to any associate company for any period preceding its adoption shall

be conditioned on approval by the Commission if the Commission directs, within 60 days after its filing, that it be deemed to be a declaration under Rule 45(a).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 488, Jan. 21, 1955; 46 FR 18534, Mar. 25, 1981; 52 FR 48986, Dec. 29, 1987; 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

§ 250.46 Dividend declarations and payments on certain indebtedness.

(a) *Dividends.* No registered holding company or subsidiary thereof shall declare or pay any dividend on any security of such company out of capital or unearned surplus, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act.

(b) *Payments on certain indebtedness.* No registered holding company or subsidiary company thereof shall, directly or indirectly, make any payment of principal or interest on any note, bond, book account or any indebtedness however evidenced which is or was issued as, or based upon a dividend or dividends created or issued or declared from, or charged against, capital or unearned surplus, or in renewal of, or in exchange for any such obligation, whether such dividend was declared before or after the act took effect, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act. In determining whether proposed payments on any such indebtedness issued or declared as a dividend in part out of earned surplus and in part out of capital or unearned surplus, or issued in renewal of, or in exchange for, such indebtedness, fall within this paragraph, past payments on account of such indebtedness or any predecessor indebtedness shall be deemed to have been first applied in reduction of the portion of such indebtedness issued or declared as a dividend out of earned surplus.

§ 250.47 Exemption of public utility subsidiaries as to certain securities issued to the Rural Electrification Administration.

(a) *Exemption.* Any public utility company which is a subsidiary company of a registered holding company shall be exempt from the obligations, duties, or liabilities imposed by the act or any rule thereunder, on such company as a subsidiary company, with respect to the issue and sale to the Rural Electrification Administration, of any security of which it is the issuer in an amount not exceeding in any one calendar year 2 percent of the aggregate of the outstanding funded indebtedness plus the capital and surplus accounts of the issuer as of the end of the prior calendar year. Such company shall also be exempt with respect to the pledge of any security or other property as collateral for any security so issued or sold, and with respect to the redemption or retirement, in whole or in part, of any such security.

(b) *Certificate of notification.* Within 10 days after the issue or sale of any security exempt under this section, the issuer shall file with the Commission a certificate of notification on Form U–6B–2 containing the information prescribed by that form.

§ 250.48 Certain exemptions in connection with appliance sales and loans to officers or employees.

(a)(1) *Exemptions in connection with appliance sales.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, in the ordinary course of business, of any evidence of indebtedness executed by customers of such public utility company as consideration for the purchase (whether from such public utility company, from an associate company thereof, or from dealers) of standard electric or gas appliances, or reacquisition of any such security guaranteed by such company.

(2) *Guarantee.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from the provisions of section