

## § 250.5

(1) Not beneficially owned by such persons and are subject to any voting instructions which may be given by customers or their assigns; or

(2) Acquired within 12 months in the ordinary course of business as a broker, dealer or underwriter with the bona fide intention of effecting distribution of the specific securities so acquired.

(b) *Exemption from section 9(a)(2)*. Any broker, dealer or underwriter, as defined in paragraph (c) of this section shall be exempt from section 9(a)(2) of the act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any securities for the account of customers, or in connection with any underwriting entered into with the intention of effecting immediate distribution of such securities.

(c) *Definition of broker, dealer or underwriter*. As used in this section, the terms “broker” or “dealer” have the meaning set forth in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (48 Stat. 882; 15 U.S.C. 78c), and the term “underwriter” means any underwriter as defined in section 2(11) of the Securities Act of 1933 (48 Stat. 74, 905; 15 U.S.C. 77b) who is regularly engaged in business as such and is not a registered holding company.

### § 250.5 Exemption of certain foreign holding companies.

Any holding company not organized under the laws of any State of the United States or the District of Columbia, and owning no utility assets located within any State of the United States or the District of Columbia and having no subsidiaries or affiliates owning any assets so located, shall, subject to the provisions of § 250.6, be exempt from all the provisions of the act and rules thereunder: *Provided*, That such exemption shall not be applicable to any acquisition of utility assets located within any State of the United States or the District of Columbia or of any security of any company owning such assets or having any subsidiary owning such assets, if, as a result of such acquisition of securities, the acquiring company will become an affiliate of the issuer, except an issuer within any class specified in § 250.10(a).

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### § 250.6 Termination of exemptions.

If it appears to the Commission (on the basis of statements claiming exemption or otherwise) that a substantial question of law or fact exists as to whether any holding company claiming exemption under § 250.2, § 250.3, § 250.4, § 250.5, or § 250.10 or any other section now or hereafter in force pursuant to section 3(a) of the Act exempting any class of holding companies from the registration requirements of the act, is within the exemption afforded by any such section, or if it appears that any question exists as to whether the exemption of any such company may be detrimental to the public interest or the interest of investors or consumers, the Commission may notify such holding company to that effect by registered mail. Thirty days after such notification, such exemption shall terminate, without prejudice to the right of such holding company to file an application for an order granting such an exemption pursuant to any applicable section of the act, and without prejudice to any temporary exemption provided for by the act if such application is filed in good faith.

[6 FR 5950, Nov. 25, 1941]

### § 250.7 Companies deemed not to be electric or gas utility companies.

(a) Any company which is primarily engaged in one or more businesses other than the business of an electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of section 2(a)(3) or section 2(a)(4) of the Act if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed an average annual amount of \$5,000,000 over the preceding three calendar years. There may be excluded from the gross sales specified:

(1) Sales of electric energy or natural or manufactured gas to tenants or employees of the operating company for their own use and not for resale; and

(2) Sales of gas to industrial consumers or in enclosed portable containers.

(b)(1) Any company whose only connection with the generation, transmission, or distribution of electric energy is the ownership or operation of facilities used for the production of heat or steam from special nuclear material which heat or steam is used in the generation of electric energy shall not be deemed an electric utility company within the meaning of section 2(a)(3) of the Act, if such company is organized not for profit and is engaged primarily in research and development activities.

(2) As a prerequisite to being entitled to the status afforded by paragraph (b)(1) of this section, any such company shall file with this Commission a statement that such company falls within the provisions of that subparagraph, including as exhibits (i) copies of its charter, by-laws and any licenses issued by the Nuclear Regulatory Commission to such company; (ii) a list of its members or stockholders indicating their respective percentages of voting power; and (iii) if such company was in existence at the end of the preceding calendar year, a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(3) As a prerequisite to retaining the status afforded by paragraph (b)(1) of this section, any such company shall annually on or before May file a statement with this Commission that such company continues to fall within the provisions of that subparagraph, including as exhibits (i) any changes or additions to its charter or by-laws or list of members or stockholders or any licenses issued by the Nuclear Regulatory Commission to such company since the time of the last filing hereunder, and (ii) a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(4) If it appears to the Commission (on the basis of the aforesaid statements or otherwise) that a substantial question of law or fact exists as to whether any company is entitled to the status afforded by paragraph (b)(1) of

this section, the Commission may notify such company to that effect by registered mail. Thirty days after such notification the status afforded by paragraph (b)(1) of this section shall no longer be available to such company, without prejudice to the right of such company to file an application for an order granting an exemption from the application of section 2(a)(3) of the Act, and without prejudice to any temporary exemption provided by that section if such an application is filed in good faith. The Commission will grant such an application if it finds that the standards set forth in paragraph (b)(1) of this section are satisfied.

(c) Any company, which (1) owns no utility assets located within any State of the United States, (2) has no subsidiary company owning any such assets so located, and (3) is engaged solely in business outside the United States, shall not be deemed to be an electric or gas utility company within the meaning of section 2(a)(3) or (a)(4) of the Act, if its gross sales of electric energy or of natural or manufactured gas distributed at retail, by means of facilities owned or operated by such company, did not exceed 1 percent of its gross revenues during the previous calendar year.

(d) A company shall not be deemed to be an electric utility company or a gas utility company which owns any of the facilities specified in sections 2(a)(3) and (4) [of the Act] *Provided*, That:

(1) Such company owns the facility as a company, as a trustee, or as holder of a beneficial interest under a trust, or as a purchaser or assignee of any of the foregoing; and

(i) Such facility is leased under a net lease directly to a public utility company either as a sole lessee or joint lessee with one or more other public utility companies, and such facility is or is to be employed by the lessee in its operations as a public utility company; and

(ii) Such company is otherwise primarily engaged in one or more businesses other than the business of a public utility company, or is a company all of whose equity interest is owned by one or more companies so engaged, either directly or through subsidiary companies; and

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(iii) The terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over the rates and service of the public utility company which leases such facility; and

(iv) The lease of the facility extends for an initial term of not less than 15 years, except for termination of the lease upon events therein set forth, unless the owner shall state in the initial certificate filed pursuant to paragraph (d)(5) of this section that a shorter term specified in the lease is not less than two-thirds of the expected useful life of the facility; and

(v) The rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues or income of the public utility company, or any part thereof.

Paragraphs (d)(1)(iii) and (iv) of this section shall not apply to a lease executed before, or within 30 days after, the effective date of this section, if the certificate required by paragraph (d)(5) of this section is filed within 60 days after such effective date.

(2) Paragraph (d)(1) of this section shall cease to be applicable in the event of termination of the lessee's right to possession or use of the facility during its term, unless within 90 days of the date of termination, and subject to such prior or subsequent regulatory and other approvals as by law may be required, such company, as defined in this section, negotiates a new lease or an operating agreement at a fixed rental.

(3) A public utility company shall not cease to be such by reason of a lease, directly or indirectly, of part or all of its facilities to any associate company or to any entity, whether or not a company, as defined in section 2(a)(2) of the Act.

(4) Except to the extent provided in paragraphs (d)(1) and (6) of this section, this section shall not relieve any company from such other provisions of the Act, and rules and regulations promulgated thereunder, as may be applicable.

(5) Any company specified in paragraph (d)(1) of this section shall file, or join in the filing of, a certificate on a form prescribed by the Commission, as to each lease within 30 days of its execution. Upon any transfer of legal or

beneficial ownership, such new owner shall file an appropriate amendment within 30 days of such transfer. If the lease is amended in a manner which would alter any item of the certificate, or if the facility ceases, for any reasons, to be subject to the lease, the holder of legal title to the facility shall file an appropriate amendment within 30 days of the event.

(6) A company shall not be deemed to be an electric utility company by reason of ownership of any interest in nuclear fuel and facilities incident to its use, if the operation and use thereof is vested by lease or contract in one or more public utility companies, unless the consideration paid by a public utility company for the use of such fuel and facilities, or of the heat or energy produced thereby, includes an amount based, directly or indirectly, on the revenue or income of the public utility company or any part thereof. Any such company shall file, or join in the filing of, the certificates specified in paragraph (d)(5) of this section. A certificate with respect to a lease or contract executed prior to, or within 30 days after, the effective date of this section shall be filed within 60 days after such effective date.

(7) The provisions of paragraphs (d)(1) and (5) of this section, and the filing requirements of paragraph (d)(6) of this section shall not apply if the facilities therein specified are in possession of and operated by one or more governmental bodies or instrumentalities thereof specified in section 2(c) of the Act.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 7 FR 3423, May 8, 1942; 21 FR 5438, July 20, 1956; 32 FR 13487, Sept. 27, 1967; 38 FR 16998, June 28, 1973; 59 FR 21927, Apr. 28, 1994]

### **§ 250.8 Exemption of subsidiaries subject to jurisdiction of Interstate Commerce Commission.**

Any subsidiary company of a registered holding company, which subsidiary is subject to the jurisdiction of the Interstate Commerce Commission but is not an electric or gas utility company or a holding company, shall be exempt from all the provisions of the act and rules thereunder, with respect to any transaction which is approved by the Interstate Commerce