

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§229.303 of this chapter); or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Public Utility Holding Company Act of 1935 and other acts referred to in section 16(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 13991, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11474, Mar. 16, 1982; 47 FR 57915, Dec. 29, 1982]

§ 250.104 Public disclosure of information and objections thereto.

PRELIMINARY NOTE: If any person wishes to object to the public disclosure of any information contained in a filing with the Commission under any provision of the Act then that portion thereof which contains such information shall be submitted in paper format only, whether or not the filer is an electronic filer.

(a) *General provision.* Unless otherwise directed by the Commission, all information contained in any notification, statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies of any or all information filed in connection with or as a part of any of the above documents will be furnished to any person upon request and upon the payment of the charge therefor.

(b) *Confidential treatment.* If any person filing a notification, statement, application, declaration, report, or other

document with the Commission under any provision of the act, or of any rules or order of the Commission thereunder, wishes to object to the public disclosure of any information contained therein, he shall file that portion thereof which contains such information separately from the remainder and shall plainly mark it "Confidential Treatment". There shall also be filed with such information written objection to its public disclosure which (1) shall identify that portion of the notification, statement, application, declaration, report or other document to the public disclosure of which objection is made, (2) shall state the reasons why public disclosure thereof is not necessary or appropriate in the public interest or for the protection of investors or consumers, and (3) may request a hearing on the question of public disclosure. Thereafter such information shall not be made available to the public unless and until the Commission so directs.

(c) *Information obtained in the course of examinations, studies, and investigation.* Information or documents obtained by officers or employees of the Commission in the course of any examination, study or investigation pursuant to section 13(g), section 15(f) (49 Stat. 825, 828; 15 U.S.C. 79m, 79o), or paragraph (a) or (d) of section 18 (49 Stat. 831; 15 U.S.C. 79r) shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court, and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the

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documents called for, basing his or her refusal upon this rule.

(d) Any officer or employee who is served with such a subpoena, shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 7036, Sept. 20, 1955; 26 FR 3102, Apr. 12, 1961; 44 FR 50836, Aug. 30, 1979; 53 FR 17459, May 17, 1988; 58 FR 15005, Mar. 18, 1993]

§ 250.105 Disclosure detrimental to the national defense or foreign policy.

(a) Any requirement to the contrary notwithstanding, no notification, statement, application, declaration, report, or other document filed with the Commission shall contain any document or information which, pursuant to Executive order, has been classified by an appropriate department or agency of the United States for protection in the interests of national defense or foreign policy.

(b) Where a document or information is omitted pursuant to paragraph (a) of this section, there shall be filed, in lieu of such document or information, a statement from an appropriate department or agency of the United States to the effect that such document or information has been classified or that the status thereof is awaiting determination. Where a document is omitted pursuant to paragraph (a) of this section, but information relating to the subject matter of such document is nevertheless included in material filed with the Commission pursuant to a determination of an appropriate department or agency of the United States that disclosure of such information would not be contrary to the interests of national defense or foreign policy, a statement from such department or agency to that effect shall be submitted for the information of the Commission. A registrant may rely upon such statement in filing or omitting any document or information to which the statement relates.

(c) The Commission may protect any information in its possession which may require classification in the interests of national defense or foreign policy pending determination by an appropriate department or agency as to whether such information should be classified.

(d) It shall be the duty of the registrant to submit the documents or information referred to in paragraph (a) of this section to the appropriate department or agency of the United States prior to filing them with the Commission and to obtain and submit to the Commission, at the time of filing such documents or information, or in lieu thereof, as the case may be, the statements from such department or agency required by paragraph (b) of this section. All such statements shall be in writing.

[33 FR 7682, May 24, 1968]

§§ 250.106—250.107 [Reserved]

§ 250.110 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the terms “small business” and “small organization,” for purposes of the Public Utility Holding Company Act of 1935, shall mean a holding company system whose gross consolidated revenues from sales of electric energy or of natural or manufactured gas distributed at retail for its previous fiscal year did not exceed \$1,000,000. There may be excluded from such gross revenues:

(a) Sales of electric energy or natural or manufactured gas to tenants or employees of any operating subsidiary company of such holding company for their own use and not for resale; and

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

[47 FR 5222, Feb. 4, 1982]