

**§ 250.88**

**17 CFR Ch. II (4-1-01 Edition)**

sell goods to, an associate company thereof if:

(1) Such associate company is not an electric or gas utility company and is principally engaged in a business or businesses other than that of a holding company or fiscal or financing agency of a holding company, or that of an investment company or investment trust; or

(2) Such services, construction, or goods are reasonably required by such associate to meet a break-down or other emergency, and the parties believe in good faith that, under the conditions then existing, such transaction will be to the advantage of such associate; or

(3) Such transaction consists of performance of a contract made before August 26, 1935, for the construction of a specific project, building, or unit, pursuant to which contract substantial expenses were incurred before August 26, 1935; or

(4) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such subsidiary company for its own use; or

(5) Such transaction consists of a sale of goods which is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods; or

(6) Such transaction consists of a sale of goods produced by the seller.

(c) This section shall not be applicable to a subsidiary which is itself a registered holding company. Such a company may perform services or construction for, or sell goods to, associate companies as provided in § 250.85.

**§ 250.88 Approval of mutual service companies; organization and conduct of business of subsidiary service companies.**

(a) Application for approval of a company as a mutual service company shall be filed by the company, or the persons proposing to organize it, with the Commission on Form U-13-1, as specified in the instructions for that form. The Commission will not approve any company as a mutual service company unless it finds that the company is so organized as to capitalization, ownership by, and representation of, member companies, costs, revenues,

and the sharing thereof, and other matters as reasonably to insure the efficient and economical performance of services or construction or sale of goods by the company for or to its member companies, at cost fairly and equitably allocated among them and at a reasonable saving over the cost of comparable services or construction performed or goods sold by independent persons.

(b) A finding by the Commission that a subsidiary company of a registered holding company (other than a mutual service company) is so organized and conducted or to be conducted, as to meet the requirements of section 13(b) of the Act (49 Stat. 825; 15 U.S.C. 79m) with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by § 250.90), will be made only pursuant to a declaration filed with the Commission on Form U-13-1, as specified in the instructions for that form, by such company or the persons proposing to organize it.

(c) Within a reasonable time after the filing of an application for approval of a mutual service company, the Commission shall, after notice and opportunity for hearing, enter an order granting or refusing approval or otherwise disposing of the application.

(d) Within a reasonable time after the filing of a declaration with respect to the organization and conduct of business of a subsidiary service company, the Commission shall, after notice and opportunity for hearing, enter an order finding that the company's organization and conduct of business meet the requirements of section 13(b) of the Act, or refusing so to find, or otherwise disposing of the declaration.

(e) Unless the Commission shall otherwise by order provide, the approval of a mutual service company, or the finding that a subsidiary service company's organization and conduct of business are sufficient to meet the requirements of section 13(b) of the Act, shall continue in effect until the Commission, after notice and opportunity for hearing, shall find that the conditions which led to such approval or finding

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are not satisfied or shall find that the company in question has persistently violated a provision of section 13 of the Act, or of any rule, regulation, or order of the Commission.

### § 250.89 Termination of contracts.

Every service, sales, or construction contract made after April 1, 1936, between a registered holding company and an associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or between a subsidiary company of a registered holding company (including a mutual service company) and any associate company thereof, shall contain provision for its termination to the extent that performance may conflict with any rule, regulation or order of the Commission adopted before or after the making of such contract.

### § 250.90 Transactions limited to cost.

(a) Except as permitted by this section, or any other applicable rule, regulation, or order of the Commission:

(1) No registered holding company shall perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing service or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and

(2) No subsidiary company of a registered holding company (including a mutual service company) shall perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so, at more than cost as determined pursuant to § 250.91 or any other applicable rule, regulation, or order of the Commission, or in the absence thereof, in accordance with sound methods of determining cost. In the case of a sale of used goods the price shall be not more than cost less depreciation. Any charges on a basis of estimated cost shall be readjusted to actual cost at least annually, if for services or goods,

and upon completion of individual projects, in case of construction.

(b) In the case of construction for an associate company of a specific project, building, or unit on which substantial expenses were incurred before August 26, 1935, pursuant to a contract made before that date, the holding company or subsidiary performing the construction shall be entitled to the proportion of its profit or fee earned prior to April 1, 1936.

(c) If a sale of goods is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods, a lump sum price for the entire transaction may include such goods without the assignment of a specific portion of the price to the cost of such goods.

(d) The price of services, construction, or goods need not be limited to cost although the transaction comes within the terms of paragraph (a) of this section if:

(1) Neither the company performing the services or construction, or selling the goods, nor the associate company receiving such services or construction, or buying such goods, is (i) a public utility or holding company, (ii) an investment company or investment trust, including any company or trust which is a medium of investment in securities for the benefit of a registered holding company or its employees or officers, or (iii) a company engaged in the business of selling goods to associate companies or performing services or construction, or (iv) a company controlling, directly or indirectly, any company specified in paragraph (d)(1) (i), (ii), or (iii) of this section; or

(2) Such transaction consists of a sale of goods produced by the seller.

### § 250.91 Determination of cost.

(a) Subject to the provisions of this section and of any other applicable rule, regulation, or order of the Commission, a transaction shall be deemed to be performed at not more than cost if the price (taking into account all charges) does not exceed a fair and equitable allocation of expenses (including the price paid for goods) plus reasonable compensation for necessary capital procured through the issuance