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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 of capital stock (or similar securities of an unincorporated company).

(b) Direct charges shall be made so far as costs can be identified and related to the particular transactions involved without excessive effort or expense. Other elements of cost, including taxes, interest, other overhead, and

compensation for the use of capital procured by the issuance of capital stock (or similar securities of an unincorporated company) shall be fairly and equitably allocated. Interest on borrowed capital and compensation for the use of capital shall represent a reasonable return on only the amount of capital reasonably necessary for the performance of services or construction for, or the selling of goods to, customers for whom transactions are required by the rules of the Commission to be performed at cost. Such amount shall not include the cost of assignment of, or any capitalization of, any service, sales, or construction contract.

(c) Any expense (including the price paid for goods) incurred in a transaction with an associate company of the performing or selling company (directly or through one or more other associate companies thereof), to the extent that it exceeds the cost of such transaction to such associate company, shall not be included in determining cost to such performing or selling company.

(d) Any expense (including the price paid for goods) incurred in a transaction with a person other than an associate company but not at arm's-length, to the extent that it exceeds the expense at which the performing or selling company might reasonably be expected to obtain elsewhere, or to furnish itself, comparable performance, goods, capital, or other items of expense involved (giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price), shall not be included in determining cost to such performing or selling company.

§ 250.92 Sales of goods produced by seller.

(a) No registered holding company shall sell any goods produced by it to any 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 enter into any contract to do so, and,

(b) No subsidiary company of a registered holding company (including a

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mutual service company) shall sell any goods produced by it to any associate company thereof, or enter into any contract to do so,

at a price which exceeds the price at which the purchaser might reasonably be expected to obtain comparable goods elsewhere, or to furnish them itself, giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price.

§ 250.93 Accounts and records of mutual and subsidiary service companies.

Every mutual service company and every company whose organization and conduct of business the Commission has found, pursuant to § 250.88, to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m) shall keep such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records in such manner and preserve them for such periods, as are prescribed in 17 CFR part 257, and shall keep no other records with respect to the same subject matter except (a) records other than accounts, (b) records required by state law, (c) subaccounts or supporting accounts which are not inconsistent with the accounts required by the Uniform System of Accounts (17 CFR part 256), and (d) such other accounts as may be authorized by the Commission.

(Sec. 15(a) and 20(a), 15 U.S.C. 79o and 79t)

[49 FR 27310, July 3, 1984]

§ 250.94 Annual reports by mutual and subsidiary service companies.

(a) On or before the first day of May in each calendar year, every mutual service company and every subsidiary service company whose organization and method of conducting business the Commission, pursuant to § 250.88, has found sufficient to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m), and every company whose application for approval, or declaration pursuant to § 250.88, is pending, shall file with the Commission a report for the prior calendar year, or any portion thereof during which there was effec-

tive as to such company any uniform system of accounts prescribed by any rules of the Commission. Every such report shall be submitted on the Form U-13-60 then in effect and shall be prepared in accordance with the instructions incorporated in such form. For appropriate cause shown, the Commission may extend the time within which any such report is to be filed.

(Secs. 13, 15, and 20(a), 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79o, 79t)

[45 FR 14548, Mar. 6, 1980, as amended at 61 FR 49961, Sept. 24, 1996]

§ 250.95 Reports required from affiliate service companies and companies principally engaged in performing services.

No affiliate of a registered holding company or subsidiary company thereof shall take any step in the performance of any service or construction for, or any sale of goods to, any company of which it is an affiliate and no company whose principal business is the performance of service or construction for, or sale of goods to, one or more registered holding companies or public utility subsidiary companies thereof, either directly or through one or more other companies, shall take any step in the performance of any such service, construction or sale of goods, unless such affiliate or company:

(a) Has filed with the Commission a report on Form U-13E-1 containing the information prescribed by that form, and

(b) Files with the Commission such information supplementing its report on Form N-13E-1 and regarding its accounts, costs, charges, maintenance of competitive conditions, disclosure of interests, duration of contracts, and other similar matters at such times and in accordance with such forms and instructions as the Commission shall designate. The provisions of this section are not applicable to a company authorized to perform service or construction for, or sell goods to, associate companies by §§ 250.85, 250.87 or 250.88.