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Commonwealth Edison Company)
)
Petition for approval of general service)
agreements, and to engage in other)
transactions, with affiliated interests)
pursuant to Sections 7-101 and 7-102)
of the Illinois Public Utilities Act)

Docket No. 00 - 0295

**PETITION FOR APPROVAL OF GENERAL
SERVICE AGREEMENT WITH AFFILIATED
INTERESTS ON AN EXPEDITED BASIS**

Commonwealth Edison Company ("ComEd" or the "Company") hereby requests, pursuant to Sections 7-101 and 7-102 of the Illinois Public Utilities Act, 220 ILCS 5/7-101 (1999) (the "Act"), that the Commission authorize and consent to ComEd's entry into general service agreements with one or more affiliated "service companies" (as described herein) as of the effective date of the merger involving ComEd's parent, Unicom Corporation ("Unicom") and PECO Energy Company ("PECO"). The service companies, which would provide ComEd with various services subsequent to the effective date of the merger, would constitute "affiliated interests" within the meaning of Section 7-101 of the Act. ComEd would enter into a separate service agreement with each such service company in the form of the service agreement attached hereto as Appendix A.

ComEd also requests that the Commission authorize it to engage in other transactions, as described herein, such as the provision of services by ComEd and the sale, leasing and/or sharing of assets, with other affiliates, pursuant to the "at cost" rules

of the Securities and Exchange Commission (“SEC”) under the Public Utility Holding Company Act of 1935 (“PUHCA”).

Lastly, ComEd requests that the Commission enter its order in this proceeding on an expedited basis to permit an orderly transition to fully-integrated merged operations.

In support of its Petition, ComEd states as follows:

1. ComEd is an Illinois corporation that provides electric utility service across northern Illinois to approximately 3.4 million customers. ComEd is a public utility within the meaning of the Act. ComEd is a subsidiary of Unicom.
2. Unicom has entered into a definitive agreement (the “Merger Agreement”) providing for a merger of equals with PECO. PECO is an electric and gas utility serving 1.5 million customers and more than 400,000 natural gas customers in the Philadelphia area. PECO also has established unregulated ventures in retail energy sales, telecommunications and utility infrastructure management.
3. Pursuant to the Merger Agreement, ComEd and PECO will become subsidiaries of a common holding company, Exelon Corporation (“Exelon”). Exelon will register with the SEC as a holding company under PUHCA.
4. Previously, on November 23, 1999, ComEd gave the Commission notice of the merger under Section 16-111(g) of the Act. Subsequently, on March 16, 2000, the Company notified the Commission that, in connection with the merger, it intends to transfer all of its remaining generating resources, including its nuclear generating stations, to a generating company affiliate of Exelon (“Exelon Genco”). The Commission has set the generating asset transfer for hearing in Docket No. 00-0244.

5. In accordance with the provisions of PUHCA and the SEC's rules, on March 16, 2000, Exelon filed with the SEC a Form U-1, which is an application for approval of the merger, including the structure of the holding company system and the form and terms of transactions to be conducted between and among the affiliates.

SEC Affiliate Transaction Requirements

6. The Exelon system companies will engage in a variety of affiliate transactions for the provision of goods, services, and construction. Those transactions must comply with the requirements and provisions of SEC Rules, including Rules 87, 88, 90 and 91 unless otherwise authorized by the SEC by order or by rule. Copies of these four SEC rules are attached at Appendix B to this Petition.

7. SEC Rule 90 prohibits a registered holding company from providing any services, goods or construction directly to a public utility affiliate. Accordingly, the Exelon system will use one or more service company subsidiaries to provide ComEd, PECO, Exelon Genco and non-utility subsidiaries with services, goods and construction. A "subsidiary service company" is one determined by the SEC to be "so organized and conducted, or to be conducted, as to [provide] reasonable assurances 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" SEC Rule 88.

8. SEC Rule 90 also provides that no service company may perform any service or construction for, or provide any good to, any affiliate at more than cost. SEC Rule 91 defines "not more than cost" to be a "price (taking into account all charges) that 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).” SEC Rule 91 also provides, among other things, that “direct charges shall be made so far as costs can be identified and related to the particular transactions involved without excessive effort or expense.”

9. Unicom and PECO have not yet determined how many subsidiary service companies will be employed, or which services will be provided by which service company if there is more than one. All service companies, however, will provide services, goods and construction pursuant to the same guidelines. Accordingly, it is not necessary at this time to identify the specific number of service companies or the specific function of each, and all service companies will be referred to generically herein as “Exelon Services.” Exelon Services will be staffed primarily by transferring personnel from the current employee rosters of Unicom, PECO and their subsidiaries. It is expected that Exelon Services will conduct substantial operations in Chicago and Philadelphia. Merger transition teams are presently considering where specific operations of the combined company will be headquartered.

Services To Be Provided By Exelon Services

10. In accordance with the SEC Rules, ComEd intends to enter into a service agreement in the form of the General Service Agreement with each service company within the Exelon system. Exelon Services will provide to ComEd, PECO, Exelon Genco and non-utility subsidiaries one or more of the following: administrative,

management and support services, including services relating to support of electric and gas plant operations (i.e., energy supply management of the bulk power and natural gas supply, procurement of fuels, coordination of electric and natural gas distribution systems, maintenance, construction and engineering work); customer bills, and related matters; materials management; facilities; real estate; rights of way; human resources; finance; accounting; internal auditing; information systems; corporate planning and research; public affairs; corporate communications; legal; environmental matters; executive services and other services listed on Schedule 2 to the General Service Agreement.

Charges for Services, Goods and Construction

11. Under the General Service Agreement, the cost of services provided by Exelon Services will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. To accomplish this, employees of Exelon Services will record their labor and expenses to bill the appropriate subsidiary company. Costs of Exelon Services will be accumulated in accounts of the service company and be directly assigned, distributed, or allocated to the appropriate client company in accordance with the applicable guidelines. There will be an internal audit group which, among other things, will audit the assignment of service company charges to client companies. Exelon Services' accounting and cost allocation methods and procedures shall be structured so as to comply with the SEC's standards for service companies in registered holding company systems.

12. As compensation for services, the General Service Agreement provides that "Client Companies listed in Attachment A hereto, as amended from time to time, shall pay to Service Company all costs which reasonably can be identified and related to particular services provided by Service Company for or on Client Company's behalf (except as may otherwise be permitted by the SEC)." The Companies listed on Attachment A to the General Service Agreement will be ComEd, PECO, Exelon Genco and any other company which is a "public utility company" within the meaning of PUHCA and which operates within the United States (the "Operating Companies") as well as any subsidiary that is involved in directly providing goods, construction or services to the Operating Companies (together with the Operating Companies, the "Utility Subsidiaries").

13. The General Services Agreement also provides that "Client Companies listed on Attachment B hereto, as amended from time to time, shall pay to Service Company charges for services that are to be no less than cost (except as may otherwise be permitted by the SEC), insofar as costs can reasonably be identified and related by Service Company to its performance of particular services for or on behalf of Client Company." The companies listed on Attachment B to the General Service Agreement will be subsidiaries that Exelon is authorized to hold, other than the Utility Subsidiaries, such as Exempt Wholesale Generators, Foreign Utility Companies, other companies exempt under PUHCA (such as telecommunications companies), certain intermediate companies and other entities which are not involved in directly providing goods, construction or services to Utility Subsidiaries.

14. Where more than one company is involved in or has received benefits from a service performed, the General Service Agreement provides that such costs "shall be fairly and equitably allocated using the ratios set forth" in the General Service Agreement. Thus, charges for all services provided by Exelon Services to ComEd will be as determined under SEC Rules 90 and 91.

Other Affiliate Transactions

15. ComEd, PECO, Genco and the other associate companies may provide to one another and other associate companies services incidental to their businesses, including but not limited to, infrastructure services maintenance, storm outage emergency repairs, and services of personnel with specialized expertise related to the operation of the utility. These services will be provided in accordance with SEC Rules 87, 90, and 91. Moreover, in accordance with those SEC Rules and Rules 41,43 and 44, certain goods and assets may be sold by one Utility Subsidiary or associate company to another, and certain assets may be used by one Utility Subsidiary for the benefit of one or more other associate companies. All of these transactions will occur "at cost" under the SEC rules. Accordingly, in addition to the transactions contemplated under the General Service Agreement, ComEd also requests authorization to engage in these incidental, "at cost" transactions.

Exemptions from the "At Cost" Requirement

16. The SEC may exempt specific transactions from the "at cost" requirement, and Exelon has requested various exemptions that would affect certain transactions

involving ComEd. This Commission has previously approved the costing treatment that Exelon seeks from the SEC for these transactions.

17. ComEd currently provides to or receives services from affiliates in accordance with an Affiliated Interests Agreement ("AIA") approved by this Commission in Docket No. 95-0615. Under the AIA, ComEd may provide services to affiliates, and affiliates may provide services to ComEd, at the "prevailing price," which, as defined in the AIA, is substantially a market price. Under the AIA, "prevailing price" means, for ComEd, the tariffed rate or other pricing mechanism approved by the Commission, and for ComEd's Unicom affiliates, the price charged to nonaffiliates if such transactions with nonaffiliates constitute a substantial portion of the affiliate's total revenues from such transactions. If there is no prevailing price, then the transactions are priced at fully distributed cost, which is substantially the same as "cost" as defined under PUHCA.

18. Under the AIA, ComEd has a contract with Unicom Energy Services ("UES") under which ComEd acquires services at the prevailing price. Under this contract, UES provides service to ComEd in connection with contracts that ComEd has with certain U.S. governmental agencies to provide energy management, demand side management and energy conservation and efficiency services. These services include energy audits, feasibility analyses, engineering and design and implementation. All services required to be provided by ComEd to the governmental entities are provided to ComEd by UES at a prevailing price. To the extent required, Exelon has asked the SEC for an exemption or waiver from applicable provisions of PUHCA for ComEd to continue this arrangement.

19. Under the Act, ComEd is authorized to provide certain competitive services to affiliates and unaffiliated parties. These services include any service "declared to be competitive" by the Commission, "contract service" for the provision of electric power and energy or other services provided by mutual agreement between an electric utility and a retail customer, and "services, other than tariffed services, that are related to but not necessary for, the provision of electric power and energy or delivery services."

("Competitive Services"). 220 ILCS 5/16-102. The price at which Competitive Services may be sold by ComEd is not limited to cost.

20. With this Commission's approval, at present, Competitive Services typically are accounted for on a "below the line" basis. The costs associated with such services may not be included in the utility's calculation of cost for rate making purposes. Any profit or loss on these activities would be disregarded for utility rate making purposes. In effect, these activities are conducted as if they were conducted by a separate nonregulated "subsidiary" except that the utility company is the actual party to the transactions. Hence, under Illinois law customers are fully protected from the possibility that an abuse of the affiliate relationships between or among ComEd and any of the other Exelon companies for such "below the line" services could result in excessive charges to ComEd, or be passed on to its customers.

21. Exelon has requested the SEC to authorize ComEd to enter into agreements with affiliates to provide Competitive Services and to acquire goods or services from affiliates related to Competitive Services at fair market prices determined under the AIA. Accordingly, to the extent that the SEC grants the requested exemptions, these transactions will not be conducted under the General Service Agreement, but under the

AIA. To the extent that the SEC does not grant the exemptions, these transactions would be subject to the General Service Agreement and the SEC Rules.

Access to Affiliated Interests' Books and Records

22. ComEd will give the Commission and its Staff access to all accounts and records of Exelon and Exelon's other subsidiaries related to the transactions between ComEd and Exelon's other subsidiaries under the General Service Agreement, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions. *See Commonwealth Edison Co.*, Docket No. 95-0515 (March 14, 1997).

Need for Expedited Relief

23. ComEd requests that the Commission approve ComEd's entry into the General Services Agreement on an expedited basis. The conduct of transactions between and among the Exelon affiliates will be necessary to achieve full and beneficial merger integration. Accordingly, the General Service Agreement will have to in place at the closing if the merger is to be implemented in a reasonable manner.

24. ComEd has not previously requested approval of the General Service Agreement from the Commission because the exemptions from the "at cost" requirement were dependent on the March 16, 2000 filing with the SEC.

25. Alternatively, ComEd requests that the Commission approve the General Service Agreement on an interim basis, and investigate the appropriateness of the General Service Agreement in a subsequent docket. This is the procedure that the

Commission followed in the Ameren case, which also involved the formation of a registered holding company. *See Central Illinois Public Service Co. et al.*, Docket No. 95-0551 (Oct. 12, 1997).

26. All notices and correspondence related to this Petition should be sent to:

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77 W. Wacker
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Chicago, Illinois 60601
(312) 782-3939 - voice
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cflynn@jonesday.com

WHEREFORE, for all the reasons stated herein, Commonwealth Edison Company respectfully requests that the Commission, on an expedited basis, authorize and consent to the Company's entry into the General Service Agreement and other transactions with various affiliated interests, all as described herein.

Respectfully submitted,
Commonwealth Edison Company

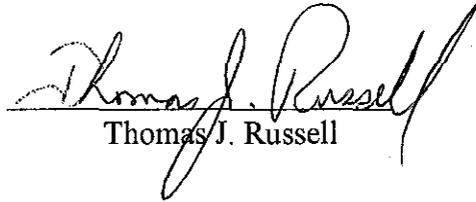
By: 
One of its attorneys

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VERIFICATION

Thomas J. Russell, Senior Counsel for Commonwealth Edison Company, being first duly sworn, does state as follows: 1) he has read the foregoing Petition; 2) he is familiar with the statements of fact made therein; and 3) the statements of fact made therein are true and correct to the best of his knowledge.


Thomas J. Russell

SUBSCRIBED AND SWORN to
Before me this 14th day of April,
2000.


Notary Public



GENERAL SERVICES AGREEMENT

BETWEEN

_____ SERVICES COMPANY

AND

EXELON CORPORATION, COMMONWEALTH EDISON COMPANY AND ITS
SUBSIDIARIES, UNICOM ENTERPRISES AND ITS SUBSIDIARIES, UNICOM
RESOURCES AND ITS SUBSIDIARIES, PECO ENERGY COMPANY AND ITS
SUBSIDIARIES, AND **[A GENERATION COMPANY TO BE NAMED AT A LATER
DATE]**

THIS AGREEMENT, made and entered into this ___ day of _____, 2000, by
and between the following Parties: _____ SERVICES COMPANY (hereinafter sometimes
referred to as "Service Company"), a _____ corporation; EXELON CORPORATION, a
Pennsylvania corporation; COMMONWEALTH EDISON COMPANY and its subsidiaries,
UNICOM ENTERPRISES and its subsidiaries, UNICOM RESOURCES and its subsidiaries,
PECO ENERGY COMPANY and its subsidiaries, and **[A GENERATION COMPANY TO
BE NAMED AT A LATER DATE]**, (hereinafter sometimes referred to collectively as "Client
Companies");

WITNESSETH:

WHEREAS, Client Companies, including EXELON CORPORATION, which has filed for registration under the terms of the Public Utility Holding Company Act of 1935 (the "Act") and its other subsidiaries, desire to enter into this agreement providing for the performance by Service Company for the Client Companies of certain services as more particularly set forth herein;

WHEREAS, Service Company is organized, staffed and equipped and has filed with the Securities and Exchange Commission ("the SEC") to be a subsidiary service company under Section 13 of the Act to render to EXELON CORPORATION, and other subsidiaries of EXELON CORPORATION, certain services as herein provided; and

WHEREAS, to maximize efficiency, and to achieve merger related savings, the Client Companies desire to avail themselves of the advisory, professional, technical and other services of persons employed or to be retained by Service Company, and to compensate Service Company appropriately for such services;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements set forth herein, the Parties agree as follows:

Section 1. Agreement to Provide Services

Service Company agrees to provide to Client Companies and their subsidiaries, if any, upon the terms and conditions set forth herein, the services hereinafter referred to and described in Section 2, at such times, for such period and in such manner as Client Companies may from time to time request. Service Company will keep itself and its personnel available and competent to provide to Client Companies such services so long as it is authorized to do so by the appropriate federal and state regulatory agencies. In providing such services, Service

Company may arrange, where it deems appropriate, for the services of such experts, consultants, advisers and other persons with necessary qualifications as are required for or pertinent to the provision of such services.

Section 2. Services to be Provided

The services expected to be provided by Service Company hereunder may, upon request by a Client Company, include the services as set out in Schedule 2, attached hereto and made a part hereof. In addition to those identified in Schedule 2, Service Company shall provide such additional general or special services, whether or not now contemplated, as Client Companies may request from time to time and Service Company determines it is able to provide.

Notwithstanding the foregoing paragraph, no change in the organization of the Service Company, the type and character of the companies to be serviced, the factors for allocating costs to associate companies, or in the broad general categories of services to be rendered subject to Section 13 of the Act, or any rule, regulation or order thereunder, shall be made unless and until the Service Company shall first have given the SEC written notice of the proposed change not less than 60 days prior to the proposed effectiveness of any such change. If, upon the receipt of any such notice, the SEC shall notify the Service Company within the 60-day period that a question exists as to whether the proposed change is consistent with the provisions of Section 13 of the Act, or of any rule, regulation or order thereunder, then the proposed change shall not become effective unless and until the Service Company shall have filed with the SEC an appropriate declaration regarding such proposed change and the SEC shall have permitted such declaration to become effective.

Section 3. New Subsidiaries

New direct or indirect subsidiaries of EXELON CORPORATION, which may come into existence after the effective date of this Service Agreement, may become additional client companies of Service Company and subject to this General Services Agreement with Service Company. The parties hereto shall make such changes in the scope and character of the services to be provided and the method of assigning, distributing or allocating costs of such services as may become necessary to achieve a fair and equitable assignment, distribution, or allocation of Service Company costs among associate companies including the new subsidiaries.

Section 4. Compensation of Service Company

As compensation for the services to be rendered hereunder, Client Companies listed in Attachment A hereto, as amended from time to time, shall pay to Service Company all costs which reasonably can be identified and related to particular services provided by Service Company for or on Client Company's behalf (except as may otherwise be permitted by the SEC). Client Companies listed in Attachment B hereto, as amended from time to time, shall pay to Service Company charges for services that are to be no less than cost (except as may otherwise be permitted by the SEC), insofar as costs can reasonably be identified and related by Service Company to its performance of particular services for or on behalf of Client Company.

The factors for assigning or allocating Service Company costs to Client Company, as well as to other associate companies, are set forth in Schedules 1 and 2 attached hereto. Attachments A and B and Schedules 1 and 2 are each expressly incorporated herein and made a part hereof.

Section 5. Securities and Exchange Commission Rules

It is the intent of the Parties that the determination of the costs as used in this Agreement shall be consistent with, and in compliance with, the rules and regulations of the SEC, as they now read or hereafter may be modified by the Commission.

Section 6. Service Requests

The services described herein or contemplated to be provided hereunder shall be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis.

Section 7. Payment

Payment shall be by making remittance of the amount billed or by making appropriate accounting entries on the books of the companies involved. Invoices shall be prepared on a monthly basis for services provided hereunder.

Section 8. EXELON CORPORATION

Except as authorized by rule, regulation, or order of the SEC, nothing in this Agreement shall be read to permit EXELON CORPORATION, or any person employed by or acting for EXELON CORPORATION, to provide services for other Parties, or any companies associated with said Parties.

Section 9. Effective Date and Termination

This Agreement is executed subject to the consent and approval of all applicable regulatory agencies, and if so approved in its entirety, shall become effective as of the date the merger between PECO ENERGY COMPANY and UNICOM CORPORATION is consummated, and shall remain in effect from said date unless terminated by mutual agreement or by any Party giving at least 60 days' written notice to the other Parties prior to the beginning of any calendar year, each Party fully reserving the right to so terminate this Agreement.

This Agreement may also be terminated or modified to the extent that performance may conflict with any rule, regulation or order of the SEC adopted before or after the making of this Agreement.

Section 10. Access to Records

For the seven years following a transaction under this Agreement, the Client Company may request access to and inspect the accounts and records of the Service Company, provided that the scope of access and inspection is limited to accounts and records that are related to such transaction.

Section 11. Assignment

This Agreement and the rights hereunder may not be assigned without the mutual written consent of all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their authorized officers as of the day and year first above written.

_____ SERVICES COMPANY

By _____

Title _____

ATTEST:

By _____

Title _____

EXELON CORPORATION

By _____

Title _____

ATTEST:

By _____

Title _____

[INSERT NAMES OF AND SIGNATURE BLOCKS FOR COMMONWEALTH EDISON COMPANY AND ITS SUBSIDIARIES, UNICOM ENTERPRISES AND ITS SUBSIDIARIES, UNICOM RESOURCES AND ITS SUBSIDIARIES, PECO ENERGY COMPANY AND ITS SUBSIDIARIES, AND A GENERATION COMPANY TO BE NAMED AT A LATER DATE]

Service Agreement Schedule 1

Allocation Ratios:

General:

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, shall be fairly and equitably allocated using the ratios set forth below.

Revenue Related Ratios:

Revenues
Sales - Units sold and/or transported
Number of Customers

Expenditure Related Ratios:

Total Expenditures
Operations and Maintenance Expenditures
Construction Expenditures

Labor/Payroll Related Ratios:

Labor / Payroll
Number of Employees

Units Related Ratios:

Usage (for example: CPU's, square feet , number of vendor invoice payments)
Consumption (for example: tons of coal, gallons of oil, MMBTU's)
Capacity (for example: nameplate generating capacity, peak load, gas throughput)
Other units related

Assets Related Ratios:

Total Assets
Current Assets
Gross Plant

Composite Ratios:

Total Average Assets and 12 months ended Gross Payroll
Other composite ratios

Service Agreement Schedule 2

Services Including But Not Limited To:

General:

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, shall be fairly and equitably allocated using the ratios set forth in Schedule 1.

Administrative & management services including but not limited to:

- accounting
 - bookkeeping
 - billing
 - accounts receivable
 - accounts payable
 - financial reporting
- audit
- executive
- finance
- insurance
- information systems services
- investment advisory services
- legal
- library
- record keeping
- secretarial & other general office support
- real estate management
- security holder services
- tax
- treasury
- other administration & management services

Expected allocation ratios: Revenue Related, Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Personnel services including but not limited to:

- recruiting
- training & evaluation services
- payroll processing
- employee benefits administration & processing
- labor negotiations & management
- other personnel services

Expected allocation ratios: Labor/Payroll Related, Units Related, Composite

Purchasing services including but not limited to:

- preparation & analysis of product specifications
- requests for proposals & similar solicitations
- vendor & vendor-product evaluations
- purchase order processing
- receipt, handling, warehousing and disbursement of purchased items
- contract negotiation & administration
- inventory management & disbursement
- other purchasing services

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Facilities management services including but not limited to:

- office space
- warehouse & storage space
- transportation facilities (including dock & port, rail sidings and truck facilities)
- repair facilities
- manufacturing & production facilities
- fixtures, office furniture & equipment

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Computer services including but not limited to:

- computer equipment & networks
- peripheral devices
- storage media
- software

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Communications services including but not limited to:

- communications equipment
- audio & video equipment
- radio equipment
- telecommunications equipment & networks
- transmission & switching capability

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Machinery management services including but not limited to:

- equipment
- tools
- parts & supplies

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Vehicle management services including but not limited to:

- automobiles
- trucks
- vans
- trailers
- railcars
- marine vessels
- aircraft
- transport equipment
- material handling equipment
- construction equipment

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Operational services including but not limited to:

- drafting & technical specification, development & evaluation
- consulting
- engineering
- environmental
- nuclear
- construction
- design
- resource planning
- economic & strategic analysis
- research
- testing
- training
- customer solicitation
- support & other marketing related services
- public & governmental relations
- other operational services

Expected allocation ratios: Revenue Related, Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Securities and Exchange Commission

17 CFR Ch. II (4-1-99 Edition)

§ 250.85

§ 250.85 **Service, sales, and construction by registered holding companies.**

Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable (including § 250.90), a registered holding company may perform services or construction for, or sell goods to, 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, and such transaction shall be exempt from the provisions of section 13(a) of the Act (49 Stat. 825; 15 U.S.C. 79m), if:

- (a) Such holding company is principally engaged in the business of an operating electric or gas utility company, or any business or businesses other than that of selling goods to associate companies, that of performing services or construction, that of a holding company or fiscal or financial agency of a holding company, or that of an investment company or investment trust; and, incidentally to such business, performs such services or construction or sells such goods; or
- (b) 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
- (c) 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
- (d) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such holding company for its own use; or
- (e) 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
- (f) Such transaction, although not exempted by any of the foregoing paragraphs of this section, is not in the regular course of business of such holding

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.

§ 250.86 **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 capitalize on, 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

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

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 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

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