

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 17, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 09-M-0544 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR--Proposed Amendments to Chapter I, Subchapters A, C and G, Chapter II, Subchapters A and G, Chapter III, Subchapters A and G, Chapter IV, Subchapters C and G, Chapter V, Subchapters A and F, Chapter VI, Subchapters A, E and F, Chapter VII, Subchapters C and D, and Chapter VIII, Subchapter B.

MEMORANDUM AND RESOLUTION
ADOPTING AMENDMENTS TO 16 NYCRR
Chapters I, II, III, IV, V, VI, VII and VIII

(Issued and Effective February 22, 2011)

BY THE COMMISSION:

INTRODUCTION

On November 30, 2010, a Notice of Proposed Rulemaking (NOPR) was issued concerning amendments to 16 NYCRR Chapters I, II, III, IV, V, VI, VII and VIII. The proposed amendments would provide for electronic filing and service as the preferred method, but allow hard copy filing and service in specified instances. The proposed rule both improves the efficiency with which the Department is able to receive, process and issue documents, and reduces the Department's reliance on paper. In engaging in this rulemaking, we are acting within our statutory authority to encourage practices that foster efficiency,

preserve environmental values and conserve natural resources. In addition, in sections already affected by these changes, revisions were made to remove obsolete or redundant provisions of the rules.

ASSESSMENT OF PUBLIC COMMENTS

A NOPR was published in the State Register on December 15, 2010 in accordance with State Administrative Procedure Act (SAPA) §201(1). The comment period expired on January 31, 2011. We received comments from Assemblywoman Roann M. Destito, Chair, Assembly Standing Committee on Governmental Operations, New York State Electric and Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RGE") (Jointly), tw telecom of new york, l.p. ("Time Warner"), Time Warner Cable, Verizon New York Inc. (Verizon), and Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange and Rockland Utilities, Inc. ("O&R") (jointly). In response to a notice concerning an earlier version of the proposed rule posted on our Web site in July 2010, we received joint comments from The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively "National Grid"). The commenter's generally support the purpose and intent of the proposed rule change. Specific comments are addressed below.

NYSEG and RGE, Time Warner and Time Warner Cable submitted statements of support for the proposed updating of our rules to allow electronic filing and service. Their comments site conservation of resources, efficiency and flexibility, as well as reduced costs and environmental benefits that will result from the rule.

Verizon supports the proposed rule changes and our objectives in implementing them. Verizon does, however, ask that we clarify that Section 1.1(m) relating to web posting as a

means of electronic service is proper only for service of Commission documents. It contends that a party should not be obligated to go to all other parties' Web sites to secure those parties' pleadings since significant delays in obtaining such documents might well result if the Web sites were experiencing technical problems. Verizon's point has merit, but we believe that the best way to handle the issue is through filing and service guidelines on our Web site.

Con Edison and O&R support our efforts to revise the rules to provide for electronic filing and service of documents, but submitted comments intended to clarify the rule changes. Con Edison and O&R wish us to add to our rules information that is currently posted prominently on our Web site as filing guidance for the public. Much of the requested information is captured on our Web site, or is in process of being added to our Web site by work within our agency. Specifically, Con Edison and O&R ask us to include in the definition section new terms "Active Parties List" and "Service List." These terms are noted on our Web site. In addition, we are in the design and implementation process of adding a new section to our Web site that will explain, and allow selection of, options for participating and monitoring our proceedings. The new Web page will explain the participation options, including Active Parties and Service List, as well as how to monitor proceedings through our Web postings. To participate in a proceeding as an Active Party or by being on the Service List, the person will be asked to submit contact information. Inclusion of contact information was another suggestion of Con Edison and O&R for addition to our rules. Since this information will be readily available to the public through our Web site, we do not see the need to add this language.

Con Edison and O&R suggest that the rules establish a time of day deadline for filing and more explicit (traditional)

statements clarifying when a filing is "sent" and "received." Also, Con Edison and O&R suggest that a generic email inbox be instituted at each utility for such service for use by the Secretary in notifying the utility about new proceedings. This process, they allege, avoids potential service of documents on the utility through an individual who may not be available to receive such service. Consistent with statutory requirements, the proposed rule establishes the method, mode and timing of filings and the Guidelines for Filing with the Secretary, prominently displayed on our Web site, will clarify filing requirements and will be changed as technology permits and as more efficient means of service evolve. As to the suggestion of an email inbox for each utility, this suggestion is one worth pursuing and the Secretary will address this in the Guidelines for Filing with the Secretary.

Con Edison and O&R also urge us to change the use of the word "receive" to "service" in Section 6-1.3(g). The use of the word "receive" is consistent with the Public Officers Law, therefore, we will retain this word.

Finally, Con Edison and O&R suggest changes to sections 216(a), 351.1, 481.1, 586.1, 686.1 and 641.7 that are intended to correct the grammar and redundant language of existing, similar rule provisions and to delete misplaced provisions from the section (specifically, Section 641.7). These are appropriate and the minor corrections will be made.

In commenting on an earlier version of the rule, National Grid agreed that the contemplated changes are beneficial because they reflect better the current and future electronic setting and protect the environment by lowering consumption of paper, lowering the use of electricity and decreasing our carbon footprint. In addition, National Grid states, the rules promote administrative efficiency, saving the time and expense of printing multiple copies of the same document to serve on

various parties, all of which reduce costs and result in savings to ratepayers. National Grid suggested some clarifying language and an extension of one day for the submission of reply comments submitted electronically, especially when a party is served electronically on a Friday or over the weekend. The request for an additional day for submission of comments is one that is addressed routinely by the Secretary by request of the parties in accord with our rules at Section 3.3. Generally, requests for extension are granted unless contrary to the orderly conduct of a proceeding.

Assemblywoman Roann M. Destito's comments address provisions in Section 6-1.2 and 6-1.3 regarding fees for preparing and reproducing records and the standard applicable in showing that a record contains confidential commercial information. She also expressed concern about our compliance with the requirements of SAPA in proposing the rule. Assemblywoman Destito views our proposed provision in Section 6-1.2 as conflicting with provisions of the Freedom of Information Law (FOIL), Public Officers Law Article 6, since the rule does not set forth specific fees for reproduction of records. The agency fees for reproduction of records are posted on our Web site and are, as they must be, in accord with the requirements of FOIL and the State Finance Law. Moreover, as our records are now entered into our document and matter management system in electronic form, requests for records increasingly are answered by a return email attaching the requested record. Such a process does not incur cost to the agency, thus no cost is passed onto the public. Assemblywoman Destito claims that Section 6-1.3(b)(2) is inconsistent with FOIL; however, that provision reflects the decision of the New York Court of Appeals in Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale, 87 N.Y.2d 410 (1995).

The Assemblywoman also expresses concern that we did not follow requirements of SAPA. Specifically, she alleges that we failed to submit all required impact statements affecting small business, local governments and rural areas. Our submitted Regulatory Impact Statement was a generic one that incorporated impacts on small business, local governments, rural areas and jobs. In addition, each impact statement was submitted individually with a reference to consult the Regulatory Impact Statement. In view of the nature of the rulemaking, this was considered efficient and appropriate by our agency and was submitted in consultation with the Governor's Office of Regulatory Reform and the Department of State. As to the cost impact on small business and local government, concerning which the Assemblywoman faults us for not having conducted a study, we addressed this aspect by reference to the cost study of the General Accounting Office. In addition, presumptively, reduction of paper usage and postage will result in savings for small businesses and local governments. If a small business or local government cannot comply with the electronic filing requirements, they would continue to submit paper filings as is the current practice and no additional costs would be imposed.

Conclusion

Having carefully considered the comments received, we will adopt the regulations attached hereto with minor clarifications, removal of redundant language and correction of typographical or grammatical errors found in Sections 216.1(a), 351.1, 481.1, 586.1, 686.1 and 641.7.

By the Commission,

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

RESOLUTION BY THE COMMISSION

Statutory Authority
Public Service Law §§ 4(1), 5(2), 7(1), 16(1), 20(1)

CASE 09-M-0544 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR--Proposed Amendments to Chapter I, Subchapters A, C and G, Chapter II, Subchapters A and G, Chapter III, Subchapters A and G, Chapter IV, Subchapters C and G, Chapter V, Subchapters A and F, Chapter VI, Subchapters A, E and F, Chapter VII, Subchapters C and D, and Chapter VIII, Subchapter B.

At a session of the Public Service Commission held in the City of Albany on February 17, 2011, the Commission by a unanimous vote of its members present,

RESOLVED:

1. That the provisions of §202(1) of the State Administrative Procedure Act and §101-a(2) of the Executive Law having been complied with, the official Compilation of Codes, Rules and Regulations of the State of New York, Title 16, Public Service, is amended, effective upon publication of a Notice of Adoption in the State Register, by the revision of Chapter I, subchapters A, C and G, Chapter II, Subchapters A and G, Chapter III, Subchapters A and G, Chapter IV, Subchapters C and G, Chapter V, Subchapters A and F, Chapter VI, Subchapters A, E and F, Chapter VII, Subchapters C and D, and Chapter VIII, Subchapter B, to read as set forth on the following pages (brackets indicate deleted material and underlining indicates new material).

2. That the Secretary to the Commission is directed to file a copy of this resolution with the Secretary of State.

CHAPTER I: Rules of Procedure
Subchapter A: General

Part 1 - Definitions and Applicability

§ 1.1 Statutory terms

Unless the context otherwise requires, terms used in this [t]Title that are defined in the Public Service Law have the meanings there given.

§ 1.2 Other terms

Unless the context otherwise requires, the following terms have the meanings specified:

(a) agency: any department, board, bureau, commission, division, office, council, committee, public benefit corporation, public authority, or other governmental entity of the State of New York.

(b) Chairman: the Chairman of the Public Service Commission.

(c) General Counsel: the [General] Counsel to the Public Service Commission.

(d) party: any person or agency named or admitted to participate in a proceeding or properly seeking and entitled as of right to be so admitted.

(e) active party: a party included on a list of active parties prepared by a presiding officer pursuant to [Section]§ 4.3(b) of this [t]Title.

(f) presiding officer: the Commissioner, or the Administrative Law Judge or other officer or employee of the Commission so authorized by the Chairman or by the Chairman's designee, presiding over a proceeding or conducting an investigation or hearing.

(g) Secretary: the Secretary to the Commission.

(h) trial staff: staff of the Department of Public Service designated to participate as a party in a particular proceeding. An individual need not appear as a witness to be considered part of trial staff.

(i) overnight delivery service: any delivery service which regularly accepts items for overnight delivery to any address in the State.

(j) web posting: publication of a document on the World Wide Web at an address that is known and accessible to all parties entitled to be provided with a copy of the document, in a format that allows the document to be downloaded, searched, saved and printed.

(k) electronic signature: an electronic sound, symbol, or process, incorporated within, attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(l) electronic filing: delivery of a document to the Secretary by e-mail or such other electronic means as may be authorized by the Secretary.

(m) electronic service: delivery by e-mail, or such other electronic means as may be authorized by the Secretary, of:

(1) a notice of web posting providing a web address linking directly to the document being served; or

(2) the document itself in a format that permits it to be searched, saved and printed by the recipient.

(n) in writing, written: denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording and email; a "signed" writing includes a writing containing an electronic signature.

§ 1.3 Applicability

[(a)] The provisions of this subchapter shall not apply to complaints and other matters arising under Subchapter B of this Chapter, except insofar as any such matter becomes the subject of a formal proceeding instituted by the Commission following a party's appeal from the decision of an informal hearing officer.

[(b)] In the event of conflict between the provisions of this subchapter and any more specific provisions of this title, the more specific provisions shall prevail.]

Part 2 - Rules of Conduct

§ 2.1 Parties and representatives

(a) A party's case may be presented personally or through a representative. A party's representative need not be an attorney, but all persons appearing before the Commission must conform to the standards of conduct required of attorneys appearing before the courts of the State of New York. Any person signing a pleading or brief or entering an appearance in any proceeding will be considered to have agreed to conform to those standards. A failure to conform to those standards will be grounds for exclusion from that and any later proceeding.

(b) When a person submits a request for permission to intervene or a notice of intent to be a party in a proceeding pursuant to §§ 4.3(c) or 85-2.11(b) and (c) of this Title, a request for party status shall be included, stating:

(1) The name, address, telephone number, and e-mail address on whose behalf the request for party status is being submitted;

(2) the name of such person's attorney or other representative (if applicable) upon whom service should be made; and

(3) any consent to electronic service given pursuant to §3.2(b)(1) of this Title.

§ 2.2 Recusal

No presiding officer shall preside over, and no member of the Commission shall participate in making a decision in, a proceeding in which such officer or Commissioner has a personal bias or interest with respect to the matter involved. Any party may submit a motion for recusal of a presiding officer or Commissioner. Such motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. The motion shall be submitted to the individual whose recusal is sought, and a copy filed with the Secretary.

Part 3 - Procedures Applicable to All Proceedings

§ 3.1 Applications to other authorities

Any person submitting an application that is subject also to the jurisdiction of a federal agency, a regulatory agency of another state, or another New York state agency shall state in the application whether a corresponding application has been submitted to that other agency (or when it will be submitted) and what action, if any, has been taken on it.

§ 3.2 Service and effectiveness of Commission documents

(a) (1) Every order of the Commission will be filed in the principal office of the Commission and served upon all parties to the proceeding in which it is issued, any other person requesting inclusion on the service list for such proceeding, and any person to whom, or corporation to which, the order issues a directive or prohibition (who or which shall be deemed to be a person or corporation to be affected by such order within the meaning of §23(1) of the Public Service Law). A certified copy or a copy bearing the seal of the Commission will be provided [to any party requesting one] upon request.

(2) [Orders and other papers will be served by the Commission personally, by mail, or by overnight delivery service. If an order is served by mail or overnight delivery service, service will be deemed made at the time of sending.] Unless a statute, order, notice or ruling provides otherwise, such order, notice or ruling is effective upon issuance, which occurs when it is posted on the Commission's website.

(3) When a party appears by a representative, service on the representative will be deemed proper service on the party.

(b) [Unless otherwise stated in the order, an order shall be effective upon issuance.] (1) To the extent required by statute, every order of the Commission will be served personally or by mail on each party to the proceeding in which it is issued and any person to whom the order issues a directive or prohibition, unless such party (or a representative by whom the party appears, such as an attorney or corporate officer) or person consents in writing to electronic service. Such written consent shall:

(i) be filed with the Secretary in writing;

(ii) state that the consenting person is authorized to do so;

(iii) state that the consenting person or party has knowingly waived the right specified in §23(1) of the Public Service Law to be served personally or by mail; and

(iv) specify any other terms of the consent which, unless otherwise specified, will continue in force until revoked.

(2) Commission documents other than orders will be served personally, by mail, by electronic service or by overnight delivery service.

(3) Electronic service is deemed complete upon sending. Personal service is complete upon delivery. Service by mail or by overnight delivery is deemed complete at the time of sending.

[(c) Oral orders may be made in the circumstances and manner specified in the Public Service Law and elsewhere in this title.]

§ 3.3 Waivers

(a) (1) Any filing deadline, method of filing, number of copies, or page limitation for any document [(as defined in §3.5(a))] required or authorized to be [submitted to] filed with the Commission (other than a document [submitted] filed in response to a specific Commission order) may be modified by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case. The Secretary's decision with respect to any such deadline or limitation shall be non-reviewable.

(2) The Secretary shall follow reasonable procedures in administering this subdivision, including the allowance of oral requests and rulings subject to such notification requirements as the Secretary may deem reasonable in the circumstances.

(b) (1) Any request for an extension of time to comply with any requirement, other than a request governed by the preceding subdivision, may be granted by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case, except that the Secretary shall refer to the

Commission any such request that would constitute a major modification of the requirement.

(2) A petition for waiver pursuant to this subdivision shall be in writing and shall be [submitted]filed in advance of the expiration of the time limit at issue. It shall describe in detail:

(i) the efforts made to comply on time with the requirement;

(ii) the circumstances alleged to have precluded timely compliance;

(iii) other factors warranting an extension of time; and

(iv) the amount of additional time being requested.

(c) Waivers not governed by subdivision (a) or (b) of this section may be granted only by the Commission. A petition for such a waiver shall be in writing and describe in detail the circumstances alleged to warrant the waiver.

(d) Requests for waivers pursuant to this section shall be on notice to all parties, except where the party requesting the waiver shows that time constraints or other circumstances preclude such notice.

(e) This section does not apply to requests for waiver of requirements imposed by a presiding officer in a proceeding or for waiver of the deadlines for responding to pleadings addressed to a presiding officer. Any such request shall be submitted to and ruled on by the presiding officer.

§ 3.4 Subpoenas

(a) Upon the application of any party to a proceeding, subpoenas and subpoenas duces tecum may be signed and issued by a Commissioner, by the presiding officer in the investigation or hearing in which the subpoena or subpoena duces tecum is requested, or by the Secretary. Normally, it is expected that requests for subpoenas will be presented to the presiding officer where one has been assigned. A copy of any request for a subpoena duces tecum shall be served on the party alleged to possess the documents requested.

(b) A subpoena duces tecum will be issued only upon written application at least seven days in advance of the hearing, setting forth the [papers]documents desired to be produced and the reasons they are reasonably related to the subject of the proceeding.

(c) Whenever a subpoena is issued at the request of any party, the cost of service thereof and the fee of the witness shall be borne by the party at whose request the witness is summoned.

(d) Except as otherwise provided in this [t]Title, matters related to subpoenas and subpoenas duces tecum shall be governed by the provisions of the Civil Practice Law and Rules.

§ 3.5 [Pleadings, briefs, and other documents]Documents filed with the Secretary

(a) [As used in this section, the term "document" refers to pleadings, briefs, applications, petitions, complaints, and any other document offered for filing with the Commission. The requirements of this section shall apply to all documents except where other provisions of this title impose differing requirements on particular types of documents]Unless modified pursuant to §3.3(a)(1), the following requirements apply to all documents filed with the Secretary:

(1) Documents shall be filed electronically unless the filing party certifies that it is unable to do so, in which case a paper document may be filed, together with the required certification signed by the filing party or the party's representative.

(2) Any paper versions requested by the Secretary must be hand-delivered no later than the day after the electronic filing or, if sent by overnight delivery service or ordinary mail, must be processed by the delivery or postal service by midnight of the same day as the filing.

(3) When a party files only paper documents pursuant to subdivision (a)(1) of this section, the party must provide a clear and permanently legible original to the Secretary, unless otherwise directed by the Secretary. The paper document must be received on or before the due date for the filing.

(b) [Pleadings and briefs shall be typewritten or printed on paper 8-1/2" by 11", with margins of no less than one inch on all four sides, and exhibits attached to them shall be folded to

the same size. Pleadings and briefs shall be printed or typewritten in characters no smaller than 11-point or its equivalent, and shall be double-spaced, except that footnotes and lengthy quotations may be single-spaced. Reproduction may be by any process, provided all copies are clear and permanently legible. Any pleading longer than 40 pages shall be printed or typewritten on both sides of the page.] A document presented for filing shall:

(1) be formatted for a page size of 8-1/2" by 11", with margins of no less than one inch on all four sides. (Exhibits attached to paper filings shall be folded to the same size);

(2) be produced with a font size no smaller than 11-point or its equivalent, and be double-spaced, except that footnotes and lengthy quotations may be single-spaced;

(3) for paper documents, be printed on both sides of the page;

(4) include, on the first or cover page, the caption for the proceeding and case number, if any; the title of the document; the name, address, e-mail address and telephone number of the party submitting it or the party's representative; and, if requesting the initiation of a new proceeding, a space for the case number;

(5) identify the other parties on which it was served;
and

(6) be signed by or on behalf of, the submitting party. Electronic documents shall have electronic signatures as directed by the Secretary. Paper documents shall have a handwritten or printed signature. If the signature is by a representative of the party, the representative's title (if any) shall be provided.

[(c) A document presented for filing shall show, on the first or cover page, the caption for the proceeding and case number, if any; the title of the document; and the name, address, and telephone number of the party submitting it or the party's representative. A document requesting the initiation of a new proceeding shall leave a space for the case number.]

[(d) A document presented for filing shall identify the other parties on which it was served.]

[(e) The original of any document presented for filing shall be signed in ink by or on behalf of each party. If the signature is by a representative of the party, the representative's title (if any) shall be provided. In any filing, a conformed copy may be substituted for the signed original as long as the signed original is submitted within five days thereafter.]

[(f) Unless otherwise required by law, regulation, or an order or notice issued in a particular proceeding, an original and five copies of each document shall be filed. A document filed in a proceeding to which there are other parties shall at the same time be served on each such party. A document requesting the institution of a new proceeding shall be served on any affected utility and on such other persons or entities as the Secretary may direct.]

[(g) (1) A document presented for filing will be deemed filed at the time the requisite number of copies are received at the Commission's Albany office unless the Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, authorizes other arrangements. A document submitted by telecopier machine shall not be considered to have been filed.]

[(2) A document served by one party on another will be deemed served at the time it is (i) delivered in-hand to the addressee or (ii) sent by United States mail, by overnight delivery service, or, in the circumstances and subject to the conditions described in the next paragraph, by telecopier machine. Where a reply must be submitted or other action taken within a specified number of days from the service of a document, that time shall be extended by five days if service was by mail and by one day if service was by overnight delivery service.]

[(3) Except as otherwise provided in this Title, parties in any proceeding may serve documents on each other by telecopier machine only if]

[(i) all active parties to the proceeding have consented to the use of telecopier machines for service on parties consenting to be so served, and]

[(ii) the party served has consented to be served by telecopier machine. Service by telecopier machine shall be deemed complete only when receipt is verbally acknowledged and a copy is sent via United States mail or overnight delivery service.]

[(4) Parties to any proceeding, who agree to be served by electronic means, may be served by electronic means. Service by electronic means is deemed complete when sent.]

(c) Additional requirements for electronically filed documents.

(1) Documents presented for filing electronically shall be:

(i) in a format that can be read using software that is readily available and is in widespread use by government, business and individuals; and

(ii) be electronically searchable unless the party providing the document certifies that it does not have the capability to produce a searchable file.

(2) Formats acceptable for the filing of documents will be identified from time to time by the Secretary.

(3) Additional guidance on electronically filed documents will be provided from time to time by the Secretary.

(d) A document presented for filing electronically will be deemed filed at the time it is received by the Secretary. A document presented for filing in paper form only will be deemed filed at the time it is received at the Commission's Albany office. The Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, may authorize other arrangements.

(e) Service of documents:

(1) A party who presents a document for filing in a proceeding in which there are other parties shall at the same time serve the document on each such party. A document requesting the institution of a new proceeding shall be served on any affected utility and on such other person or entities as the Secretary may direct.

(2) When a document is served by a party on another party, service shall be by electronic means unless the serving and receiving parties agree otherwise, or the Secretary or presiding officer, upon a showing of good cause, authorizes the use of a different means of service.

(3) Electronic service is deemed complete upon sending. If service by other means is agreed upon or authorized pursuant to paragraph (2) of this subdivision, it will be deemed

complete when delivered in-hand to the addressee or when sent by United States mail or overnight delivery service.

(f) When a reply must be submitted or other action taken within a specified number of days from the service of a document, that time shall be extended by five days if service was by mail and by one day if service was made electronically or by overnight delivery.

([h]g) Documents filed may be amended on notice to all parties on whom the original document was served. The Secretary or presiding officer may reject any amendment upon finding that its acceptance would be unfair to other parties.

([i]h) The requirements of this section may not be avoided by a party's use of a "letter in lieu of a brief" or similarly styled document; but this provision shall not preclude acceptance of letters and informal documents from the general public.

([j]i) A document requesting the Commission to adopt a rule [take any action requiring prior notice] pursuant to the State Administrative Procedure Act shall include a draft of [a]the required notice of proposed rulemaking in the form required by that statute and specified by the Department of State. If the filing party is requesting the Commission to take any action on an emergency basis pursuant to [section]§ 202(6) of the State Administrative Procedure Act, the document requesting such action shall include a proposed statement, in sufficient detail to satisfy the statute, of why emergency action is needed.

(j) All documents addressed to or submitted to a presiding officer which are required to be served on all parties to a proceeding, with the exception of discovery requests and responses, must also be filed with the Secretary.

§ 3.6 Motion practice

(a) All written motions shall, pursuant to § 3.5 of this Part, be [in writing, except that oral] filed with the Secretary and at the same time be served on each party to the proceeding. Oral motions may be made at hearings or in extraordinary circumstances where required by the public interest. Any oral motion not made at a hearing shall be on oral notice to all parties to the proceeding.

(b) In cases in which a presiding officer has been assigned and a recommended decision not yet been issued, motions shall be

addressed to [and filed with] the presiding officer. In all other instances, motions shall be addressed to [and filed with] the Secretary.

(c) Motions shall clearly set forth the nature of the relief requested and the alleged basis for it.

(d) (1) Parties wishing to respond to motions shall do so within eight days after service [if service was made personally, within nine days after service if service was made] unless a different time period is permitted by [overnight delivery service] § 3.5(f) of this Part[;] or [within 13 days after service if service was made by mail] is otherwise established by the presiding officer or the Secretary.

(2) The response shall be addressed to [and filed with] the official to whom the motion was addressed and, pursuant to § 3.5 of this Part, be filed with the Secretary and at the same time be served on each party to the proceeding.

(3) Replies to responses will not be entertained except in extraordinary circumstances or if the response itself seeks relief and effectively constitutes a counter-motion.

[(e) When a motion or response is addressed to the presiding officer, the original shall be filed with the presiding officer and five copies submitted to the Secretary. Where a motion or response is addressed to the Secretary, the original and 25 copies shall be filed with the Secretary.]

§ 3.7 Rehearings

(a) Any person interested in an order of the Commission may request rehearing within 30 days of service of the order. [An original and 25 copies of a] The petition for rehearing shall, [be submitted] pursuant to § 3.5 of this Part, be filed with the Secretary[,] and [a copy of the petition shall] at the same time be served on each party to the proceeding.

(b) Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

(c) Any party may respond to a petition for rehearing within 15 days of the date the petition was served on the

responding party, but the Commission may deny a petition before that time has elapsed. [An original and 25 copies of any]Pursuant to § 3.5 of this Part, a response shall be filed with the Secretary, and [a copy of the response] at the same time [shall] be served on each party to the proceeding. Replies to responses will not be entertained except in extraordinary circumstances.

(d) The filing of a petition for rehearing does not in itself stay or excuse compliance with an order.

§ 3.8 Oral argument before the Commission

(a) The Commission may authorize oral argument before it in any proceeding on its own motion or at the request of a party. In general, oral argument before the Commission will be allowed only in unusual cases, where the issues are not adequately developed in testimony and written pleadings.

(b) A party requesting oral argument before the Commission may do so in any brief to the Commission or in a separate motion filed no later than the deadline for the final authorized round of briefs. Any such request shall include an explanation of why the party believes oral argument is warranted.

(c) The issues that may be raised on oral argument, and the parties authorized to argue, shall be determined by the Commission. The time allowed each party shall be determined by the Secretary.

(d) This section does not apply to oral argument before a presiding officer, which shall be allowed to the extent and in the manner permitted by the presiding officer in any proceeding.

§ 3.9 Settlement procedures

(a) Notification required for settlement discussions in pending proceedings involving large utilities.¹

(1) As soon as it appears, based upon exploratory discussion with another party or potential party, that settlement of an issue or issues in a pending proceeding is possible, the utility shall file, with the Secretary, a notice

¹ The term large utility as used in this section means Class A and B electric and gas companies and Class A telephone and water companies.

of impending negotiation. The notice shall contain the following:

(i) a general description of the issues that may be settled;

(ii) a list of the persons or parties to the negotiations; and

(iii) a certification by a duly authorized representative of the utility that all appropriate persons and parties have been or will be notified of the pendency of negotiations in a manner so as to permit a reasonable time for preparation.

(2) The Administrative Law Judge assigned to the case shall review the notice to ensure all persons who reasonably should have been notified of the pendency of the negotiations have been afforded a reasonable opportunity to participate. The Administrative Law Judge may take any action necessary to protect the rights of persons participating or desiring to participate in the negotiations or who reasonably should have been notified of the pendency of negotiations. The Administrative Law Judge shall report the results of the procedural review to the Commission.

(b) Notification required for settlement discussions in pending proceedings involving small utilities.² [(1)] The procedures for notification of impending negotiations in cases involving small utilities shall be the same as set forth in subdivision (a) of this section except, that if an Administrative Law Judge has not been assigned to the proceeding, [the notification should be filed with] the Director of the appropriate Division will carry out those responsibilities assigned to the Administrative Law Judge in paragraph (a)(2) of this section. [(viz.: Power, Gas, Communications or Water) instead of the Secretary.]

[(2) If an Administrative Law Judge has not been assigned to the proceeding, the Director will carry out those responsibilities assigned to the Administrative Law Judge in paragraph (a)(2) of this section.]

² The term small utilities as used in this section means Class C and D electric and gas companies, Class B telephone companies and Class B, C and D water companies. Class E water companies which have less than \$100,000 in annual gross revenues, have been excluded from these regulations.

(c) Notification required for settlement discussions in anticipation of a formal proceeding.

(1) In the event the potential to settle issues between adverse entities arises outside the context of a formal proceeding or in anticipation of a formal filing, [large utilities]a utility shall file a notice of intention to negotiate with the Secretary [and small utilities with the Director of the appropriate operating Division (viz.: Power, Gas, Communications or Water)] and shall give notice to all persons who participated in either of the subject utility's two most recent proceedings of the same or similar type as that in which the settlement negotiations are proposed and to any other person reasonably known to have an interest in the outcome of negotiations and can reasonably be expected to engage actively in the negotiations. The notice shall contain the same information as required by paragraph (a)(1) of this section.

(2) The utility shall be responsible to determine the list of potential parties and, in the event of uncertainty, may seek guidance through the Secretary's Office.

(3) The responsibilities outlined in paragraph (a)(2) of this section shall be carried out by the Administrative Law Judge, if one is assigned, [and]or by the Director of the appropriate division, if an Administrative Law Judge is not assigned.

(d) Confidentiality of settlement discussions. No discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation session concerning a stipulation or settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties, their representatives and other persons attending settlement negotiations shall hold confidential such discussions, admissions, concessions, and offers to settle and shall not disclose them outside the negotiations except to their principals, who shall also be bound by the confidentiality requirement, without the consent of the parties participating in the negotiations. The Administrative Law Judge assigned to the case, or the Director of the appropriate division if no Administrative Law Judge has been assigned, may impose appropriate sanctions for the violation of this subdivision which may include exclusion from the settlement process.

(e) Confidentiality in mediations. The confidentiality provisions set forth in subdivision (d) of this section shall apply to a neutral and any agent or employee of the Department

of Public Service participating in a mediated proceeding. A mediated proceeding is any process in which an alternative dispute resolution technique is used to resolve an issue in controversy, where a neutral may be appointed and specific parties participate. In particular, any oral or written communication prepared for the purpose of a mediated proceeding (mediation communication), shall not be required to be disclosed. A written agreement to enter into a mediated proceeding or reached as a final result of such proceeding, or any communication the parties agree is public information, is not a mediation communication.

Part 4 - Hearings

§ 4.1 In general

Hearings will be held in cases where required by law and in such other cases as the Commission may direct. Evidentiary hearings shall be governed by the provisions of this [p]Part, except as otherwise specifically provided in this Title. Legislative-type hearings shall be conducted in accordance with such procedures as the Commission may direct.

§ 4.2 Notice

The time and place of each hearing may be determined by the Commission, the Secretary, or the presiding officer. Notice of hearings, specifying time, place, and purpose, will be given in accordance with statutory requirements and such additional requirements as the Commission, the Secretary, or the presiding officer may direct. Any party required to publish or otherwise issue notice shall file proof of having done so at or before the hearing.

§ 4.3 Parties

(a) Only the parties to a proceeding may present evidence [or testimony]and examine and cross-examine witnesses.

(b) (1) Parties to a proceeding shall include the applicant, petitioner, or complainant, if any; the affected utility company or certificate holder (even if not the applicant or petitioner); trial staff; appearing agencies; and other persons permitted by statute or regulation or by the presiding officer to intervene.

(2) In cases having numerous parties, the presiding officer may promulgate a list of active parties and identify types of documents that need not be served on parties omitted from that list. Omission from that list, however, shall not otherwise affect a party's standing.

(3) To avoid unnecessary duplication, the presiding officer may require parties with similar interests to consolidate their presentations.

(c) (1) Any person may ask the presiding officer for permission to intervene. Permission will be granted if the intervention is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.

(2) Permission to intervene after a hearing has commenced may be sought and granted at any time, unless the presiding officer determines that granting such permission would be unfairly prejudicial to other parties. A party intervening after the start of the hearing shall be bound by the record as developed to that point and by such conditions of intervention as the presiding officer may impose.

(d) Staff counsel shall provide the presiding officer and all parties a list of persons designated to serve as trial staff in the case as soon as it is practical to do so and shall [report to them] promptly report [on] any additions to the list. A person once included on the list may not later be deleted.

§ 4.4 Pre-hearing conference

(a) A presiding officer may convene a pre-hearing conference to formulate or simplify issues; arrange for the exchange of testimony and exhibits; limit the number of witnesses; set schedules; or otherwise expedite the orderly conduct of the proceeding.

(b) Facts disclosed in pre-hearing conferences shall be privileged. Except by agreement, they may not be used against participating parties unless proven by independent evidence.

§ 4.5 General procedures

(a) At hearings, parties to the proceeding will be afforded reasonable opportunity to present evidence and examine and cross-examine witnesses. Examination of all witnesses will be conducted orally and stenographic minutes will be taken.

(b) (1) Any party or prospective party presenting an initial or rebuttal case in a proceeding shall do so by means of prepared written testimony and exhibits, except that a presiding officer, for good cause in extraordinary circumstances, may allow direct oral testimony to be given.

(2) Prepared written testimony, in question-and-answer form, shall be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each of the witnesses is present at the hearing at which his or her prepared written testimony is offered and adopts that testimony under oath. If cross-examination of a witness' prepared written testimony is waived by all other parties, that witness need not be present and his or her testimony may be adopted by affidavit submitted to the presiding officer.

(3) Anyone wishing or required to submit prepared written testimony shall comply with the following requirements:

(i) The testimony shall be prepared in question-and-answer form unless the presiding officer determines that use of some other form would enhance the record.

(ii) The testimony shall be [typed and] double-spaced[.] and [T]he top, bottom and left-hand margins shall be at least one and one-half inches.

(iii) The name of the witness shall be [typed] at the top center of each page one inch from the edge, the case number, if already assigned, shall [be typed] appear in the upper left corner of each page, and the page number for each page shall be [typed] located at the bottom center one inch from the edge. The number of each line of the testimony shall be set out on the left-hand side of each page, to the right of the area constituting the margin.

(iv) A square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for Public Service Commission use.

(4) If written testimony is not filed in the proper form, it will be treated as the presiding officer may direct, taking account of such factors as timing, extent of noncompliance, and prejudice to other parties.

(5) Exhibits shall be prepared as a document separate from the testimony and shall be identified by the initials of

the sponsoring witness and a number. [They]Pages shall be [typewritten or printed on a] single-sided [of the page,] and [pages of multi-page exhibits shall be] numbered.

(c) (1) Except as otherwise provided in subdivision (d) of this section, [at least five copies]a copy of written testimony and exhibits shall be filed [in the office of]with the Secretary and [one copy] shall be served on the presiding officer and on each party, unless the presiding officer or a provision of this Title otherwise directs.

(2) If an exhibit consists of a drawing, map, plan, or other information that is difficult to reproduce, [only an original and two copies need be filed with the Secretary]parties may consult with the presiding officer regarding the preferred method of service upon other parties and shall consult directly with the Secretary as to the format requirements for filing.

[(3) Either the original or a copy of each exhibit will be kept in the official file of the proceeding.]

(d) (1) In any case in which a major rate change (as defined in the Public Service Law) is proposed, the utility company shall submit with its tariff filing [15 copies of] the prepared written testimony and exhibits that will comprise its initial case in support of its rate filing and shall forward [two copies]a copy [of the written testimony and exhibits] to the New York State Consumer Protection Board. In addition, the utility company shall [supply]serve a copy of the testimony and exhibits [to]on each party appearing in the proceeding [and]who so request[ing]s.

(2) At the hearing, the utility company's initial case shall be limited substantially to the material submitted with its tariff filing, except as otherwise provided in this Title or unless the presiding officer, for the purpose of promoting the fair, orderly, and efficient conduct of the case, shall rule otherwise.

(e) In proceedings set for hearing, discovery of information will be allowed in accordance with Part 5 of this Title.

(f) The presiding officer at any hearing shall have the powers granted by applicable statutes and regulations as well as all authority customarily exercised by presiding officers and not inconsistent with applicable statutes and regulations.

§ 4.6 Postponements and adjournments

All parties should be prepared to proceed at the first hearing called in any proceeding. Any motion to postpone the first hearing [should]shall set forth the reasons why the postponement is needed and be filed in time to permit other parties to be notified. Any hearing may be adjourned from time to time by the presiding officer, and the first hearing may be postponed by the presiding officer even if its date was set by order of the Commission.

§ 4.7 Interlocutory review

(a) Interlocutory review of a ruling by a presiding officer will be available and may be sought only in extraordinary circumstances or in case a request for permission to intervene has been denied. Normally, the prospect of parties incurring additional workload in consequence of a ruling will not in itself constitute extraordinary circumstances.

(b) Any request for interlocutory review must be filed within 15 days of the issuance of the ruling to which it pertains.

(c) In addition to complying with the requirements applicable to motions generally (see [section]§ 3.6 of this [t]Title), a motion for interlocutory review shall:

(1) identify specifically the ruling to be reviewed, and, if the ruling was issued from the bench, set forth as an appendix the pertinent pages of the transcript; and

(2) identify the extraordinary circumstances alleged to warrant interlocutory review[; and]_.

[(3) be filed, with 25 copies, in the office of the Secretary.]

(d) A party need not file an interlocutory appeal to preserve its right to object to a ruling in its briefs.

§ 4.8 Briefs and argument to the presiding officer

(a) Briefs shall be addressed to the presiding officer unless the Commission determines in any proceeding that briefs shall be addressed directly to it. In that event, references in

this section to the presiding officer shall be deemed to refer to the Secretary.

(b) The presiding officer shall determine the number of briefs that may be written, the schedule for filing them, and the page limitations if any. Copies of exhibits may be appended to any brief without being charged against a page limitation. The presiding officer may authorize oral argument where he or she finds it warranted and determine the scope of any such argument and the procedures to be followed.

(c) Briefs shall meet the general requirements for [all pleadings] documents filed with the Secretary, set out in [section] § 3.5 of this [t]Title. In addition, any brief longer than 10 pages (exclusive of exhibits) shall include a table of contents.

(d) [Twenty-five copies]Pursuant to § 3.5 of this Title, each brief shall be filed with the Secretary, and [a copy shall]at the same time be served on each party to the proceeding.

§ 4.9 Reports and recommended decisions

(a) In any case set for hearing, the presiding officer may submit a report to the Commission or prepare a recommended decision. If a report is submitted, the Commission may decide the case without further proceedings.

(b) If a recommended decision is prepared, the Secretary shall determine in the first instance whether to issue it for exceptions or to present it directly to the Commission. If it is presented to the Commission, the Commission may adopt it (with or without modification) without further proceedings or may direct that it be issued for exceptions. If the Commission directs issuance of a recommended decision, it may restrict exceptions to specified issues. A recommended decision that is issued for exceptions shall be served on all parties.

§ 4.10 Exceptions

(a) If a recommended decision is issued for exceptions, each party may file a brief on exceptions and a brief opposing exceptions, but the Secretary may determine that briefs opposing exceptions will not be entertained. Unless otherwise specifically authorized by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case,

pleadings additional to those authorized by this section will not be entertained.

(b) Briefs on exceptions may be filed within 20 days of the issuance of the recommended decision, and briefs opposing exceptions may be filed within 15 days thereafter. The Secretary may extend or curtail these time limits at the request of a party or on the Secretary's own motion.

(c) (1) In addition to meeting the requirements of this subdivision, briefs on exceptions and briefs opposing exceptions shall comply with the requirements of [section]§ 3.5 of this Title and § 4.8 of this Part. They shall be self-contained, and may not incorporate earlier pleadings by reference.

(2) A brief on exceptions shall contain:

(i) a short statement of the case;

(ii) a summary of the party's basic position;

(iii) the grounds on which the exceptions rest;

and

(iv) the argument in support of the exceptions, including references to the record and to authorities relied on. The argumentation should not simply reiterate the party's position, but should explain why the party believes the recommended decision to be in error.

(3) A brief opposing exceptions shall be directed only at exceptions raised by other parties, and may not raise issues not raised on exceptions. It shall identify each exception replied to.

(4) If only a brief on exceptions is authorized, it may not exceed 50 pages. If briefs on exceptions and opposing exceptions are authorized, they may not exceed 100 pages in total. The Secretary may modify these page limitations at the request of a party or on the Secretary's own motion.

(d) (1) All recommended decisions shall be subject to review by the Commission, in whole or in part, regardless of whether exceptions have been filed.

(2) A party's failure to except with respect to any issue shall constitute a waiver of any objection to the recommended decision's resolution of that issue. If the Commission adopts the recommended resolution, a party that has

not excepted may not seek a different resolution of that issue on rehearing.

Part 5 - Discovery

§ 5.1 Generally

(a) Consistent with the limitations and procedures set forth in this part, parties shall fully disclose to each other, upon request, all information (including data, records, objects, and documents) relevant and material to a proceeding in which they are participating and any information likely to lead to such information. The provisions of this part apply to formal proceedings, and do not limit any other authority of the Commission or its staff to obtain information from a utility company, or other entity.

(b)[In addition to]To the maximum extent possible, [methods of service otherwise acceptable,] discovery requests and responses pursuant to this Part [may]shall be served [by telecopier machine on any party consenting to be so served. Any such party may waive the conditions specified in [section] § 3.5(g) of this Title related to confirmation and mailing] electronically.

§ 5.2 Informal discovery

(a) Parties are encouraged to communicate and exchange information informally, including by telephone or by meeting, and to use the formal procedures provided for below only as necessary.

(b) Material or information provided by one party to another through informal discovery need not, for that reason alone, be made available to third parties. Nevertheless, no party may refer to, introduce into evidence, or otherwise use at a hearing, except in its pre-filed written testimony or in response to cross-examination, any information obtained through informal discovery unless that party first shows that all other active parties received or had a reasonable opportunity to receive that response reasonably in advance of the hearing at which such use is proposed.

§ 5.3 Interrogatories

(a) After a proceeding is commenced and until any cut-off point that the presiding officer may set, any party may serve written interrogatories on any other party. Each interrogatory shall be clear and concise, and, to the degree possible, employ technical terms in the way they are usually employed in Commission proceedings; encompass only questions related to each other; and be [typed] presented on a separate page. Each party's interrogatories (and document requests pursuant to [section] § 5.4 of this Part) shall be numbered consecutively throughout the proceeding. A copy of every interrogatory shall be served on each party, and on the presiding officer, if he or she so requests.

(b) An individual knowledgeable as to the content of each response to an interrogatory may be required to testify as to its truth or accuracy. If the name of that individual is not set forth on the response, it shall be provided promptly by the responding party upon request.

(c) Except as provided below, a party to whom an interrogatory is directed shall answer each question separately in writing, and shall set forth the question immediately before its answer. Answers shall be served on the requesting party within 10 days following service of the interrogatory, and a copy shall be served on any presiding officer or party who so requests.

(d) If the interrogated party cannot prepare a response within 10 days, it shall, within the 10 days, so inform the interrogating party and state when the response will be forthcoming. Any ensuing dispute over timing of the response shall be submitted to the presiding officer for resolution.

(e) Any objection to an interrogatory shall be made in writing and served on all parties and the presiding officer within 10 days of service of the interrogatory. The interrogatory need not be answered while the objection remains pending. If the presiding officer overrules the objection, the answer to the interrogatory shall be served within five days following the issuance of the ruling or within 10 days following service of the interrogatory, whichever is later.

§ 5.4 Requests for documents

(a) After a proceeding is commenced and until any cut-off point that the presiding officer may set, any party may serve a

written request for documents (including writings, drawings, and electronically stored information) on any other party. The request shall describe the documents sought with reasonable particularity, though the description may be by clearly defined category rather than by item. A copy of every request shall be served on each party, and on the presiding officer, if he or she so requests.

(b) Except as provided below, a party to whom a request for a document is addressed shall furnish a copy of the document to the requesting party within 10 days of service of the request. A copy of each document shall be provided to any presiding officer or party who so requests. [Nothing in this rule, however, shall require a party to translate stored data from one medium to another] Electronic service of a copy of the document satisfies this obligation.

(c) If the party from which a document is sought cannot provide a copy within 10 days, it shall, within the 10 days, so inform the requesting party and state when the copy will be forthcoming. Any ensuing dispute over timing of the response shall be submitted to the presiding officer for resolution.

(d) Any objection to a document request shall be made in writing and served on all parties and the presiding officer within 10 days of service of the request. The document need not be supplied while the objection remains pending. If the presiding officer overrules the objection, the document shall be supplied within [five] 5 days following the issuance of the ruling or within [ten] 10 days following service of the request, whichever is later.

(e) If a requested document is voluminous, the responding party may permit the requesting party to examine the document at the responding party's office and then supply a copy of only so much of the document as the requesting party finds it needs. The times, locations, and conditions for such examination shall be reasonable, and the presiding officer shall [~~insure~~ ensure] that responding parties do not use this option to impose unfair burdens on requesting parties or otherwise hinder discovery.

§ 5.5 Requests for admissions

(a) After a proceeding is commenced and until any cut-off point that the presiding officer may set, any party may serve on any other party a request to admit the genuineness of a document, the accuracy or fairness of representation of photographs, drawings, or maps, or the truth of any statement of

fact. A copy of every request shall be served on each party and the presiding officer, if he or she so requests.

(b) Responses to requests for admission shall be served within 10 days of service of the request. A copy of the response shall be served on each party and on the presiding officer.

(c) Any request for admission not denied within 10 days will be deemed granted, except in extraordinary circumstances where the failure to deny within that time is shown to be justified.

(d) Admissions made or deemed to be made will be applicable only to the proceeding in which they are requested.

§ 5.6 Other discovery

The presiding officer, on request or by his or her own motion, may authorize other forms of discovery, including oral depositions and inspection of sites, facilities, or original documents. A party requesting such procedures shall show that the likely benefits cannot otherwise be obtained and outweigh the associated costs.

§ 5.7 Supplementation of responses

A party shall promptly amend a previous discovery response if, during the course of the proceeding, it learns that the previous response was incorrect when made or, though correct when made, is no longer so in a material respect.

§ 5.8 Scope of discovery

(a) Discovery requests should be tailored to the particular proceeding and commensurate with the importance of the issues to which they relate. They should be limited to materials or information that:

(1) the requesting party expects to use in cross-examination or in preparing its case;

(2) are not already possessed by or readily available to that party; and

(3) are not conveniently obtainable elsewhere. Unduly broad requests will not be allowed.

(b) Discovery that is unreasonably cumulative, repetitive, or duplicative will not be allowed.

(c) In general, a party will not be required to develop information or prepare a study for another party. In unusual circumstances, however, where a party from [whom]which discovery is sought uniquely possesses the information needed for a study and the ability to prepare the study (for example, computerized data and a program for manipulating them), a request to develop information may be granted if the information appears material and the request, considered on its own and in the context of other similar requests in the proceeding, does not appear unduly burdensome or costly. The presiding officer may condition the granting of such a request on the requesting party's agreement to bear specified costs of performing the study. In no event would a party preparing a study for another be required to testify in support of the study or be constrained in its presentation of its own position on that account.

(d) Claims of evidentiary privilege may be raised by parties in their objections to discovery requests. In resolving claims that information is privileged or exempt from discovery, the presiding officer shall be guided but not bound by the Civil Practice Law and Rules and case law pursuant to it and may conduct in camera examinations, issue protective orders, and adopt other measures suited to the particular situation.

(e) Claims that information is exempt from discovery on the grounds it is a trade secret, confidential commercial information or critical infrastructure information shall be treated in accordance with [section] §6-1.4 of this [t]Title.

(f) Requests for documents in the control of trial staff shall be subject to the provisions of this [p]Part. If trial staff asserts the "official information privilege" pursuant to § 87(2)(g) of the Public Officers Law, that assertion will be sustained only upon a showing that the interest in the confidentiality of the document at issue outweighs the interest of the requesting party in its disclosure. Documents within the control of trial staff include those prepared by persons currently or previously designated to serve on it and those prepared by other employees of the Department and reviewed by, or in the possession of, a trial staff member in the course of his or her participation in the case in which the discovery request is made.

(g) Denial of discovery pursuant to this [p]Part does not preclude the granting of a request for a document pursuant to the Freedom of Information Law, where warranted.

§ 5.9 Miscellaneous procedures

(a) Every party shall identify an individual to whom [data]discovery requests should be referred.

(b) The determination of when [S]service of discovery requests, objections, or responses [will be considered]is complete [when the document is deposited in the United States mail, first-class, postage prepaid; delivered to an overnight delivery service; or transmitted, to a party who has consented to receive such transmissions, via facsimile machine or via direct electronic transfer of data files between electronic data processors]is governed by § 3.5(e)(3) of this Title.

(c) Parties should attempt to resolve discovery disputes among themselves, without involvement of the presiding officer. Problems relating to questions or answers should be communicated to the other party immediately by telephone.

(d) The presiding officer may, [on]at the request of any party or on his or her own motion, modify the procedures set forth in this [p]Part for the purpose of promoting the fair, orderly, and efficient conduct of the case.

§ 5.10 Sanctions

If a party fails or refuses to comply with a directive to disclose material, or renders incomplete or substantially misleading responses, the presiding officer may:

([1]a) take as established, to the disadvantage of the recalcitrant party, specified facts related to the matter at hand;

([2]b) prohibit the recalcitrant party from introducing the evidence concerning which the discovery request was made; or

([3]c) take such other action as may be proper in the circumstances.

Part 6 - Implementation of Provisions of Public Officers Law

Subpart 6-1

Public Access to Department Records

§ 6-1.1 Availability of records

(a) The public records of the Department of Public Service may be inspected, in accordance with the provisions of this Part, during regular business hours on Monday through Friday, exclusive of legal holidays, at the [following] offices of the Department of Public Service[:]. Records will be made available to requesting persons in hard copy or electronically as appropriate.

[(1) Three Empire State Plaza, Albany, NY;]

[(2) 90 Church Street, New York, NY.]

(b) When the requested records are to be transferred between offices or from the State record center, are in use, or are otherwise not available within five business days of receipt of a written request that reasonably describes the records, a written acknowledgment of the receipt of the request and a statement of the approximate date when the request will be granted or denied shall be furnished. When a request will be granted in whole or in part, if circumstances prevent disclosure to the person requesting the records within 20 business days after the date of the acknowledgement of the receipt of the request, a written explanation of the inability to grant the request within 20 business days shall be provided, together with a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. If access to the records is neither granted nor denied within a reasonable time after the date of acknowledgment of receipt of a request, or if the agency fails to conform to the provisions of § 89(3) of the Public Officers Law, such failure may be construed as a denial of access that may be appealed pursuant to the appeals procedure set forth in 21 NYCRR 1401.7.

(c) A request for public inspection or copying of a record may be made electronically or by mail to the Records Access Officer, Department of Public Service[, Three Empire State Plaza, Albany, NY 12223]. The Records Access Officer shall respond to such request by electronic mail, provided that the written request does not require a response in some other form.

(d) Appeals pursuant to the procedure set forth in 21 NYCRR 1401.7 may be submitted in electronic form or by mail to the Secretary and shall be heard by the [s]Secretary[to the Public Service Commission, Three Empire State Plaza, Albany, NY 12223].

§ 6-1.2 Fees

[Unless otherwise prescribed by statute, photocopies of official documents (public records) will be furnished in accordance with the following pricing schedule:]

[(a) The fee for duplication of Commission records from originals 8 1/2" x 11" and 8 1/2" x 15" shall be 25 cents per page.]

[(b) The fee for special reproductions such as photocopies of large items, copies of microfilmed records, etc., shall be based upon the average unit cost for copying a record, excluding fixed costs of the Department, such as operator salaries overhead.]

[(c) The fee for original or reprinted publications, when available, shall be based on a schedule of fees to be maintained by the records access officers of the Department.]

The fees for preparing and reproducing Department records shall be in accordance with a schedule of fees maintained by the Secretary and made publicly available.

§ 6-1.3 Records containing trade secrets, confidential commercial information or critical infrastructure information

(a) Definition of a trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.

(b) Manner of identifying trade secrets, confidential commercial information or critical infrastructure information.

(1) Any person submitting records, pursuant to law, regulation or directive, to the [d]Department and requesting trade secret or confidential commercial status for information contained therein, and any person or entity submitting, or otherwise making available, records to the [d]Department and requesting critical infrastructure status for information

contained therein, shall submit the records to the [d]Department [r]Records [a]Access [o]Officer in electronic form or by mail and shall clearly identify the records or portions thereof considered to be confidential. This may be accomplished by separating and placing on or attaching to such information at the time of submission a cover sheet or other suitable form of notice, using such language as "critical infrastructure information," "confidential commercial information," "trade secret" or "proprietary". Where the request itself contains information which, if disclosed, would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(2) A person submitting trade secret or confidential commercial information to the [d]Department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided for in §87(2)(d) of the Public Officers Law. In all cases, the person must show the reasons why the information, if disclosed, would be likely to cause substantial injury to the competitive position of the subject commercial enterprise. Factors to be considered include, but are not necessarily limited to:

(i) the extent to which the disclosure would cause unfair economic or competitive damage;

(ii) the extent to which the information is known by others and can involve similar activities;

(iii) the worth or value of the information to the person and the person's competitors;

(iv) the degree of difficulty and cost of developing the information;

(v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and

(vi) other statute(s) or regulations specifically excepting the information from disclosure.

(3) A person or entity submitting, or otherwise making available, critical infrastructure information to the [d]Department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided in § 87(2) of the Public Officers Law.

(4) A person desiring confidential status for a limited period of time shall indicate such time frame at the time the information is submitted to the [d]Department.

(5) Failure to identify trade secret information at the time of submission may make the information accessible to others without notice to the person who submitted such information unless a specific exemption from disclosure by other statutes or regulations pertains to the information.

(c) Responsibility for custody and maintenance of confidential records.

(1) The [d]Department [r]Records [a]Access [o]Officer shall [i]ensure compliance and coordinate public requests for access to records as set forth in [section]§ 6-1.1 of this [Subpart]Part.

(2) The Department [r]Records [a]Access [o]Officer shall be responsible for custody of such records [but may delegate this responsibility to the office director most immediately and directly involved with the content of the record].

(3) The manner of designating the persons responsible for maintaining confidential information while in the possession of office personnel [custody] shall be determined by each office director so as to adequately safeguard access to the information while at the same time providing the flexibility required for daily operations.

(4) All documents containing confidential information [shall be returned by the office when its work is complete to the department records access officer for permanent custody. These documents] will be maintained apart by the [d]Department from all other records and will not be divulged to unauthorized persons so long as they remain classified as confidential.

(5) Information submitted pursuant to subdivision (b) of this section shall be excepted from disclosure and maintained apart by the agency from all other records until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction.

(d) Safeguarding confidential records.

(1) Each office or employee having [custody or] possession of the confidential information shall take

appropriate measures to safeguard such information and to protect against its disclosure.

(2) The use of simple and effective devices to identify and manage a confidential record repository shall be established so that security is maintained.

(e) Status of records prior to [d]Department determination.

(1) Until such time as the [d]Department makes a determination, confidential information submitted in accordance with subdivision (b) of this section shall be excepted from disclosure and be maintained apart and in a secure manner from other [d]Department records.

(2) Confidential status shall be granted to documents submitted in accordance with subdivision (b) of this section if a prima facie case for confidentiality is made and such status shall be continued until such time as the agency, on its own initiative, or at the request of any person for a record excepted from disclosure pursuant to § 89(5) of the Public Officers Law, finally determines the confidential status of the document.

(3) The initial determination with respect to the confidential status of a document shall be made by the Department [r]Records [a]Access [o]Officer and the office director [charged with custody] most immediately and directly involved with the content of the document on the basis of the information for which confidential status is sought and written material submitted with the information, as well as any written statement of the necessity for an exception from disclosure submitted pursuant to §89(5)(b)(2) of the Public Officers Law.

(f) Requests for access to department records granted confidential status or where determination pending.

(1) A request for access to [d]Department records granted confidential status, or where such a determination is pending, may be made by any person and shall be in writing. The department may at any time on its own initiative redetermine the classification of records granted confidential status.

(2) The [d]Department shall give written notice to the person who originally submitted the confidential records that the record has been requested and that a determination will be made regarding access. The original requester of confidential status shall have 10 business days from receipt of the written

notice to submit a statement to justify an exception from public disclosure.

(3) Within seven business days of the receipt of a statement of justification from the person who originally submitted the record, or within seven business days of the expiration of the period prescribed for submission of the statement, the [d]Department Records Access Officer shall serve a written ruling upon the person requesting access to the record, which either grants or denies access to the record. The [department] ruling shall state the reasons for the determination. The [department] ruling shall also be served upon the person who originally submitted the information, and the Committee on Open Government. [Information copies are to be filed with the department records access officer and a copy will also be sent to the office director having custody of such records, if not in the custody of the Department records access officer.]

(g) Appeal of negative determinations.

(1) A determination that the submitted material does not merit confidential status made under subdivision (e) or (f) of this section or the grant or denial of access to the records made under subdivision (f) of this section may be appealed in writing, in electronic form or by mail, within seven business days of receipt. [or 12 days of mailing of such determination.] The appeal is taken when it is received by the [s]Secretary [of the commission] who shall hear appeals from such negative determinations. The [s]Secretary may consult with the General [c]Counsel [to the commission] and the [c]Chief [a]Administrative [l]Law [j]Judge or their designees in reaching a determination. In addition, a copy of the appeal shall be served upon the opposing party and [filed with] sent to the [d]Department [r]Records [a]Access [o]Officer.

(2) The [s]Secretary shall review the appeal and a written final determination shall be sent to the person requesting the record, if any, and the person who requested the exception within 10 business days after receipt of the appeal, which determination specifically states the reason or reasons for such final determination. A copy of the final determination shall also be sent to the Committee on Open Government, [and shall be filed with] the [d]Department [r]Records [a]Access [o]Officer and posted on the Commission's Web site.

§ 6-1.4 Special rules applicable when a presiding officer is assigned

(a) Manner of identifying trade secrets, confidential commercial information or critical infrastructure information.

(1) Whenever a party seeks disclosure of information in an administrative proceeding, the party in possession of such information may request that it be granted confidential status. A party requesting confidential status shall submit the record containing such information to the presiding officer in electronic form or by mail and shall clearly identify the portions of the record considered to be confidential.

(2) The party submitting confidential information to the presiding officer shall also submit a comprehensive brief specifying in detail the reasons why such information should be accorded confidential status as provided for in [section] § 6-1.3 (b)(2) of this Subpart.

(3) Information submitted pursuant to this section shall be excepted from disclosure and maintained apart by the agency from all other records until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction.

(b) Initial determination of confidential status.

(1) After reviewing the information submitted under subdivision (a) of this section, the presiding officer shall make an initial determination of its relevance to issues in the proceeding. If such information is determined to be relevant, the presiding officer shall, within seven business days, issue a written determination granting or denying confidential status to the information or any portions thereof. The presiding officer may in any proceeding require that the information for which confidential status has been requested be submitted immediately under a protective order so that all parties may have access to the information without delay.

(2) After a determination that the information submitted is not relevant, the presiding officer shall return the information to the party who submitted it.

(3) In reaching a determination as to the status of the information, the presiding officer shall consider the information for which confidential status is sought, the material submitted by the party pursuant to paragraph (a)(3) of this section, and any other responsive documents, material or

testimony deemed necessary or proper in keeping with the claims of confidentiality.

(c) Safeguarding confidential records in administrative hearings. The presiding officer shall take appropriate measures to preserve the confidentiality of trade secrets, confidential commercial information or critical infrastructure information. Measures to be considered include, but are not necessarily limited to:

(1) limiting access to the material;

(2) deleting sensitive material that is not relevant to issues in the hearing;

(3) aggregating or summarizing data in a manner that preserves the confidentiality of confidential information; and

(4) restricting attendance during portions of a hearing at which confidential proof is to be introduced.

(d) Appeal from a determination by the presiding officer.

(1) A determination that the submitted information does not merit confidential status under subdivision (a) of this section or a determination granting or denying access to the material, including determinations with respect to the measures that will be taken to preserve the confidentiality of the information, made under subdivisions (b) and (c) of this section, may be appealed in writing, in electronic form or by mail, within seven business days of receipt of such determination. The [s]Secretary [of the commission] shall hear appeals from such negative determinations. The [s]Secretary may consult with the General [c]Counsel [to the commission] and the [c]Chief [a]Administrative [l]Law [j]Judge or their designees in reaching a determination.

(2) The [s]Secretary shall review the appeal and a written final determination shall be sent to the person requesting the record, if any, and the person who requested the exception within 10 business days after receipt of the appeal, which determination specifically states the reason or reasons for such final determination. A copy of the final determination shall also be sent to the Committee on Open Government, [and shall be filed with] the [d]Department [r]Records [a]Access [o]Officer and posted on the Commission's Web site.

Subpart 6-2
Personal Privacy Protection

§ 6-2.1 Purpose and scope

(a) It is the responsibility and the intent of the Department to fully comply with the provisions of Article 6-A of the Public Officers Law, the "Personal Privacy Protection Law."

(b) The Department shall maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(c) Personal information will be collected, whenever practicable, directly from the person to whom the information pertains.

(d) The Department seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely, and complete.

(e) [These regulations] This Subpart provides information regarding the procedures by which members of the public may assert rights granted by the Personal Privacy Protection Law.

§ 6-2.2 Definitions

(a) Data subject. The term data subject means any natural person about whom personal information has been collected by an agency.

(b) Personal information. The term personal information means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject.

(c) Record. The term record means any item, collection, or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject. The term record shall not include personal information which is not used to make any determination about the data subject if it is:

(1) a telephone book or directory which is used exclusively for telephone and directory information;

(2) any card catalog, book, or other resource material in any library;

(3) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing agency information;

(4) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;

(5) information requested by the agency which is necessary for the agency to answer unsolicited requests by the data subject for information; or

(6) correspondence files.

(d) System of records. The term system of records means any group of records under the actual or constructive control of any agency pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

§ 6-2.3 Designation and duties of privacy compliance officer

(a) The Department's [r]Records [a]Access [o]Officer is hereby designated privacy compliance officer and is responsible for ensuring that the agency complies with the provisions of the Personal Privacy Protection Law and [these regulations] this Subpart; and for coordinating and developing the Department's response to requests for records or amendment of records.

(b) The address of the privacy compliance officer is[: NYS Department of Public Service Office of General Counsel Three Empire State Plaza Albany, NY 12223] available on the Commission's website.

(c) Upon receipt of a request from a data subject, which may be sent in electronic form, [T]the privacy compliance officer is responsible for:

(1) assisting a data subject in identifying and requesting personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information

identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record sought:

(i) making the record available for inspection in [a printed] written form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permitting the data subject to copy the record; or

(iii) denying access to the record in whole or in part and explaining in writing the reasons therefor;

(4) making a copy of any record to be made available to a data subject, upon request, and upon payment of or offer to pay established fees (see [section]§ 6-1.2 of this Part), and responding to such requests by electronic mail, provided that the written request does not require a response in some other form, or permitting the data subject to copy the records;

(5) upon request, certifying that:

(i) a copy of a record is a true copy; or

(ii) the Department does not have possession of the record sought; or

(iii) the Department cannot locate the record sought[; or] after having made a diligent search; or

(iv) the information sought cannot be retrieved by use of the description thereof, or by use of the name o[f]r other identifier of the data subject without extraordinary search methods being employed by the Department.

§ 6-2.4 Proof of identity

(a) When a request is made pursuant to this [Part]Subpart in person, or when records are made available in person following a request made electronically or by mail, the Department may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the Department, a photograph or similar information that confirms that the records sought pertain to the data subject.

(b) When a request is made pursuant to this Part, by mail, the Department may require verification of a signature o[f]r inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

§ 6-2.5 Fees

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this [part]Subpart.

(b) Unless otherwise prescribed by statute, written [photo]copies of records will be furnished in accordance with [the pricing schedule set forth in section] § 6-1.2 of this Part.

§ 6-2.6 Public inspection of records

(a) Records shall be made available both electronically and at the main office of the Department[, which is located at: NYS Department of Public Service Three Empire State Plaza Albany, NY 12223].

(b) [w]Whenever practicable, records shall be made available at the New York City Office of the Department [located at: NYS Department of Public Service 90 Church Street New York, NY].

(c) The Department shall accept requests for records and produce records during regular business hours[, which are 8:30 a.m. to 4:45 p.m].

§ 6-2.7 Requests for records and information

All requests made pursuant to this [Part]Subpart shall be made in writing and must be accompanied by a reasonable proof of identity.

§ 6-2.8 Amendment of records

Within 30 days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the Department shall:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraphs (d), (i) or ([1]1) of subdivision one of [section]§ 96(1) of the Public Officers Law;

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

§ 6-2.9 Denial of request for a record or amendment or correction of a record or personal information

(a) Denial of a request for records or amendment or correction of a record or personal information shall:

(1) be in writing, explaining the reasons therefor;
and

(2) identify the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

§ 6-2.10 Appeal

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to [section]§ 6-2.9 of this Subpart may, within 30 days of such denial, appeal in writing to the [s]Secretary [of the Public Service Commission, whose address is: Department of Public Service Three Empire State Plaza Albany, NY 12223].

(b) [t]The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant, including an e-mail address, if available.

(c) Within [seven]7 business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the Secretary [person determining such appeals] shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i), or ([1]1) of subdivision one of [section]§ 96(1) of the Public Officers Law.

(e) The Department shall immediately forward to the Committee on [o]Open [g]Government a copy of any appeal made pursuant to this section upon receipt, the determination thereof and the reasons therefore at the time of such determination.

§ 6-2.11 Statement of disagreement by data subject

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the [Department]Secretary a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record

has been or is disclosed pursuant to paragraph (d), (i), or (1) of subdivision ([1]1) of [section]§ 96(1) of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the Department shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i), or ([1]1) of subdivision one of [section]§ 96(1) of the Public Officers Law, the Department may also include a concise statement of [its]the Secretary's reasons for not making the requested amendment or correction.

Part 8 - Declaratory Rulings

§ 8.1 Availability

(a) Declaratory rulings may be issued with respect to:

(1) the applicability to any person, property, or state of facts of any rule or statute enforceable by the Commission or the validity of any such rule;

(2) whether any action by the Commission should be taken pursuant to a rule; and

(3) whether a person's compliance with a Federal requirement will be accepted as compliance with a similar State requirement applicable to that person.

(b) A declaratory ruling may also be issued [as well] whenever [else] the Commission determines it is warranted by the public interest.

§ 8.2 Procedure

(a) In addition to complying with the requirements of [section]§ 3.5 of this Title, a petition for declaratory ruling shall contain:

(1) a caption and a complete statement of the facts and grounds prompting the petition, including a full disclosure of the petitioner's interest;

(2) a clear, concise statement of:

(i) the controversy or uncertainty that is the subject of the petition; and

(ii) the petitioner's proposed resolution of that controversy or uncertainty; and

(3) citations to any statutes, rules, or other authorities involved.

(b) At the time it is filed, a petition for declaratory ruling shall be served on the affected utility company, if any, and any other entity known to be directly affected by or interested in the requested ruling. The [s]Secretary may require service on other affected or interested persons.

(c) Responses to a petition for declaratory ruling may be filed within 21 days of the date the petition is filed, shall be served upon the petitioner, and shall comply with the requirements of [section]§ 3.5 of this Title. All respondents, as well as the petitioner, shall be considered parties.

(d) A petitioner for a declaratory ruling shall promptly correct any deficiencies in a filed petition and shall make available for the Commission's use the originals, or, if so directed, certified or verified copies, of all books, papers, and documents that may be required. Failure to do so may be grounds for declining to issue a declaratory ruling.

(e) Where a petition seeks a declaratory ruling with respect to whether an action should be taken pursuant to a rule, the ruling or a statement declining to rule will be issued within 60 days of the date the petition is [received]filed.

§ 8.3 Effect

A declaratory ruling shall be identified as such, shall be binding on the Commission, and shall not be retroactively changed.

Subchapter C: Applications for Authority

Part 17 - Matters Relative to All Applications

§ 17.1 Preparation and filing of petition

[(a)] All applications for approval, consent, permission or certificate of authority shall be by petition duly verified. [At least three copies of such] The petition [with]and all accompanying [papers]documents shall be filed in accordance with the [secretary of the commission at Albany] requirements of § 3.5 of this title.

[(b)] So far as practicable, applications should be on paper about 8 1/2 inches by 11 inches in size.]

§ 17.2 Attachment of certificate of incorporation

[There shall be annexed to the original petition] [a]A certified copy of the certificate of incorporation of every corporation directly interested in presenting the petition, together with a certified copy of each amendment to such certificate[. Copies of all such documents] shall [be] [attached to the second and third copies of] accompany the petition. [but need not be certified. When] If a document has once been filed with the [c]Commission, the petitioner may, in lieu of filing further copies, state in the petition such fact with the date of filing and the proceeding in which the same was filed.

§ 17.3 Further information required

The petition shall contain such further information as required by law or by rules of the [c]Commission and shall set forth in detail that compliance has been had with such requirements.

§ 17.4 Correction of deficiencies

[(a)] Deficiencies in a filed petition, when called to the attention of the applicant, must be promptly corrected, or the application may be denied for lack of proper submission.

§ 17.5 Furnishing of original document

The petitioner shall furnish and make available for the use of the [c]Commission the originals of all books, papers and documents which may be required or if so directed certified or verified copies of the same. Failure so to do may be grounds for [refusing]rejecting the application.

Subchapter G: Certificates of Environmental Compatibility and Public Need

Part 85 - General Procedures

Subpart 85-1

Procedures with Respect to Gas Transmission Lines Less than 10 Miles Long

§ 85-1.1 Environmental management and construction standards and practices

All persons who intend to construct fuel gas transmission lines as described in this [Part]Subpart shall:

(a) file [two copies] in accordance with the requirements of § 3.5 of this Title, the EM&CS&P that will be followed to protect and minimize impact to the environment during installation and maintenance of all such lines; and

(b) file [two copies] in accordance with the requirements of § 3.5 of this Title, [of] a certified statement agreeing to install and maintain such lines in accordance with EM&CS&P approved by the [c]Commission.

§ 85-1.2 Filing and service of notices of intention

(a) Any NOI filed by an applicant to construct a fuel gas transmission line less than five miles long and six inches or less in nominal diameter shall contain:

(1) the dates on or about which the applicant intends to begin construction of the line;

(2) a brief statement describing and locating the line (using text and a topographic map at a scale of 1:24,000 -- 1 inch = 2,000 feet -- or larger with legend), including:

(i) its length (and the nominal diameter of its segments), including markers required by paragraph 9 of Appendix 14-K of 16 NYCRR Part 255;³

(ii) depth at which pipe will be buried;

(iii) maximum allowable operating pressure (psig);

(iv) R/W width;

(v) width of any area to be cleared;

(vi) any known underground facilities to be crossed or paralleled³;

(vii) name or permit number of any wells to be connected to the line³;

(viii) the point where the line connects to another pipeline (giving the nominal diameter of such line and the owner's name)³;

(ix) existing or proposed access roads to be used for construction and maintenance of the line and any associated compressor station³;

(x) for any new or expanded compressor station³, a site development plan (at a scale of at least 1 inch=20 feet), showing: location; setbacks to property lines; structures (giving profile, materials and finish); grading and landscaping; drainage provisions; number, type, size and model of the compressor(s) and silencer(s); and the materials and design of any noise abatement structures; and

(xi) the name of every municipality in which any portion of the line is to be located³;

³ This item shall be shown on the map, which shall cover the entire project area.

(3) an indication of which measures and techniques from the approved EM&CS&P to which the applicant has agreed (or any site-specific modification thereof) will be followed in an effort to minimize or avoid adverse environmental impact on sensitive resources affected by the line(s) to the maximum extent practical, which resources include⁴:

(i) existing and officially approved planned residential, commercial, industrial, institutional, recreational and agricultural land uses⁵;

(ii) ecosystem resources, including highly erodible soils⁶, wetlands, flood plains, streams, springs, wells, unique old-growth forests, active sugarbushes, productive timber stands⁷, trees listed in the Registry of Big Trees in New York State and habitats of rare, threatened and endangered species (from wetlands on, these resources can be identified in cooperation with the landowner and the Department of Environmental Conservation);

⁴ The applicant shall provide the name, title and qualifications of the company representatives directly responsible for seeing that all environmental requirements are fully met.

⁵ Concerning agricultural land use, the applicant shall, in cooperation with the landowner(s) and Soil and Water Conservation District, consider both active and inactive fields. Active and inactive fields, by definition, are cropland, rotation hayland and cropland, hayland, livestock grazing areas, orchards and vineyards. The applicant shall also identify those areas containing practices for agricultural resources management, including strip-cropping, diversion terraces, underground tile drain lines, surface drainage ditches, and waste management conveyance and storage systems.

⁶ To aid in the selection of measures and techniques for minimizing adverse environmental impact on the soil's resource, the applicant should contact the county office of the U.S. Department of Agriculture, Soil Conservation Service, to identify the soil type(s) and slope(s) and respective limitations, including the depth of the topsoil, depth from surface to bedrock, and soil drainability.

⁷ Productive timber stands are viable or potential commercial forest stands composed of saplings (0-5 inches in diameter), poles (6-11 inches in diameter- and/or mature trees (12 inches plus in diameter).

(iii) officially designated visual resources⁸, including scenic areas, roads, vistas and overlooks; and

(iv) officially designated cultural resources⁸, including archaeological sites and historic districts, places and properties.

(b) The applicant shall file and serve the NOI, in accordance with the requirements of § 3.5 of this Title [an original (including original topographic map) [and four copies] of the NOI with the [c]Commission,] and serve one copy on the chief executive officer of every municipality in which any portion of the line is to be located⁹. Proof of service shall accompany the NOI [copies filed with the commission].

(c) If an applicant wishes to construct and operate a line without obtaining a permit from any other State agency, municipality or agency thereof, the NOI shall contain, in addition to the information required by subdivision (a) of this section:

(1) a request that the line(s) included in it be reviewed under [section 85-1.8 of this Subpart] §121-a(7) of the Public Service Law;

(2) a list of applicable State and local laws and regulations issued thereunder, including copies of any local ordinance, law, resolution or other action, any regulation issued thereunder, or any local standard or requirement that, as applied to the line, the applicant believes to be unreasonably restrictive in view of the existing technology, factors of cost or economics or the needs of consumers¹⁰; and

⁸ Designated and listed by the State, county, town, city or incorporated village. This includes listings by the State Historic Preservation Officer and the National and State Registers for historic and cultural sites.

⁹ Provision of additional copies directly to county and town planners, and county, town, city or village highway superintendents, will expedite the certification process.

¹⁰ To satisfy this requirement, a list of State and local permits will usually be sufficient. This list might include wetland permits, stream-crossing permits, road-crossing permits, or any other State or municipal permit. The applicant's filing of a road-crossing permit form with the Department of Transportation does not alter the [c]Commission's jurisdiction as the ultimate decision making authority with respect to the siting of fuel gas transmission lines.

(3) a request that the [c]Commission make the determination set forth in [section] § 126(1)(f) of the Public Service Law.

(d) If the NOI contains the request set forth in paragraph (c)(1) of this section, the applicant shall serve one copy on each State agency which has the authority to administer and enforce compliance with any legal provision cited in response to the requirement of paragraph (c)(2) of this section. The applicant shall serve the [c]Commissioner unless an agency has regional offices; in such case, a copy shall also be sent [only] to the regional office¹¹. Proof of service shall accompany the [copies filed with the commission]NOI.

§ 85-1.3 Filing and service of applications

(a) An application to construct a fuel gas transmission line which is less than 10 miles long, other than as described in [section]§ 85-1.2(a) of this Subpart, or [section]§ 120(2) of the Public Service Law, shall contain:

(1) the information required by:

(i) [section] § 85-1.2(a) of this Subpart; and

(ii) [section] § 85-1.2(c)(2) of this Subpart;

(2) a description using text and detailed construction-type map (at a scale of 1 inch = 400 feet, or larger) showing the centerline and the specific relationship of the line to such features as:

(i) sensitive resources which will be affected by the line, as defined in [section] § 85-1.2(a)(3) of this Subpart;

(ii) property boundaries, fences, walls and hedgerows to be crossed; and

(iii) any dwelling within 150 feet;

(3) a statement explaining the need for the line, including:

¹¹ Before filing copies with the [c]Commission, the applicant should contact the appropriate regional office to obtain the name and address of the official who should be served.

(i) a demonstration that a market¹² (or specific purchaser) for the gas will exist;

(ii) where the applicant will serve retail customers, a demonstration that gas supplies will be adequate to serve existing and potential consumers during the first 10 years of the line's operation; and

(iii) a showing (if well-drilling is not contemplated in conjunction with the line) of the improvements in system reliability, capability, safety or benefits offered by the line; and

(4) any other information the applicant considers relevant.

(b) The applicant shall file and serve the application, in accordance with the requirements of § 3.5 of this Title [an original (including original topographic map) and four copies of its application with the commission,] and serve one copy each on:

(1) the central office and the appropriate regional offices of:

(i) the Department of Environmental Conservation¹³; and

(ii) the Department of Transportation¹³;

(2) the Commissioner of Agriculture and Markets;

(3) the State Archaeologist;

(4) the State Historic Preservation Officer;

(5) any other State agency which has authority to administer and enforce compliance with any legal provision listed in response to the requirement of subparagraph (a)(1)(ii) of this section; and

¹² Where such a demonstration is made in another proceeding, either before this [c]Commission or the Federal Energy Regulatory Commission, that demonstration may be supplied.

¹³ Before serving copies, the applicant should contact the appropriate regional office to obtain the name and address of the official who should be serviced.

(6) the chief executive officer of every municipality in which any portion of the line is to be located¹⁴.

(c) Proof of service shall accompany the [copies filed with the commission]application.

**Subpart 85-2 - Procedures with Respect to all Electric
Transmission Lines and Fuel Gas Transmission Lines 10 or More
Miles Long**

§ 85-2.2 Materials required for filing

(a) A filing for a certificate shall contain:

(1) the application;

(2) the exhibits and information required by statute and these regulations;

(3) the testimony, in written form, and exhibits which will comprise the applicant's direct case in support of its application; and

(4) any additional information which the applicant deems necessary or desirable.

(b) At the time [of submission, of its filing the applicant shall submit 10 copies of] the applicant presents its filing to the [executive s]Secretary, the applicant shall submit in accordance with the requirements of §3.5 of this Title. The [c]Commission or its staff may request additional copies of the filing at any time.

CHAPTER II: Electric Utilities

Subchapter A: Service

**Part 100 - New Construction of Distribution Lines, Service Lines
and Appurtenant Facilities in Residential Subdivisions**

¹⁴ Provision of additional copies directly to county and town planners, and county, town, city or village highway superintendents, will expedite the certification process.

§100.1 New construction of underground facilities in residential subdivisions.

(a) This Part applies to the new construction of distribution lines, service lines and appurtenant facilities within residential subdivisions. Nothing in this Part shall be construed to compromise the ability of a state or local agency to require underground facilities in the exercise of its land use or environmental protection authority.

(b) Any distribution line, service line and appurtenant facilities necessary to furnish permanent electric service to one or more multiple occupancy buildings (including four or more dwelling units) shall be installed underground and any such facilities necessary to furnish permanent electric service within a residential subdivision in which it is planned to build five or more new residential buildings shall be installed underground if:

(1) the residential subdivision will require no more than 200 trench feet of facilities per dwelling unit planned within the residential subdivision; or

(2) a utility's tariff provides for such underground service without contribution; or

(3) a governmental authority having jurisdiction to do so has required undergrounding; or

(4) an applicant requests undergrounding.

Note: The number of dwelling units is the criterion to be used to determine whether installation is required to be underground. In order to ascertain the number of dwelling units, it is necessary to consult the approved subdivision map to determine how dwelling units are planned. Each lot shown on the map should, in the case of a single family dwelling, be considered to contain one dwelling unit unless there is sufficient contrary evidence to render it unlikely that each lot will contain a separate dwelling unit (e.g., a foundation is constructed occupying two lots). The measurement of trench footage should be the shortest distance required to serve the homes within the residential subdivision, consistent with the utility's obligation to provide safe and adequate service.

(c) Upon receipt of a proper application, the utility shall inform the telephone company and cable television company serving the area in which the residential subdivision is

located, of the receipt of such application. Upon compliance by the applicant with the requirements of this Part, the utility shall install underground electric distribution lines with sufficient capacity and suitable material which, in its judgment, will assure that the applicant will receive safe and adequate electric service. Such installation shall be undertaken by the utility as soon as is reasonably possible after receipt of a proper application and shall be made at a time appropriate to render service. Construction will not be delayed by the utility so that the applicant will be delayed in the sale or other disposal of the buildings, or lots, except where such delay is caused by strikes, fire, flood, inclement weather, unavailability of materials, civil disorders, or other conditions beyond the control of the utility. No overhead circuits, including street lighting circuits, shall thereafter be installed by a utility within a residential subdivision having underground electric distribution lines.

(d) The utility is permitted to designate the service connection point to a residential building or to a multiple occupancy building and the point at which any service line will connect to the utility's electric distribution line or equipment. Each service line within the lot line and running to the building shall be installed either by the utility, or by the applicant in accordance with the utility's specifications, as the utility may elect and in accord with the utility's tariff, provided, however, that the utility's tariff must permit the applicant at least to excavate the trench necessary for the underground installation of distribution lines, service lines or appurtenant facilities within the residential subdivision, and provided, further, that allocation of the costs of such installation shall be determined in accordance with [section] § 98.2 regardless of who installs the service line.

(e) A utility may install overhead distribution lines in a residential subdivision or section thereof otherwise required to have underground distribution lines in accordance with subdivision (b) of this section when:

(1) the developer of the residential subdivision is not primarily engaged in the construction of dwelling units within the residential subdivision;

(2) no governmental authority having jurisdiction to do so has required underground service; and

(3) either:

(i) five years have elapsed from the sale of the first lot within the residential subdivision to the first application for installation and the utility has no indication that there will be other new applicants in the residential subdivision within six months; or

(ii) five years have elapsed from the time of final approval of the residential subdivision or section thereof and less than 25 percent of the lots have been sold in the residential subdivision or any section thereof except where 10 percent or more of the lots in the residential subdivision or any section thereof have been sold within the last two years.

Note: The term final approval refers to authorization of a residential subdivision by governmental authorities having jurisdiction. A residential subdivision is finally approved when all necessary governmental consents have been obtained to allow the developer of the residential subdivision to sell lots and/or build residences. If a residential subdivision need only be approved by a County Health Department the final approval of that agency in accordance with its regulations when received is final. If the Town Planning Board must give its consent as well, final approval is not obtained until the Board and the Health Department have completed their processes of authorization. A section of a residential subdivision is the smallest unit of a subdivision given final governmental approval. If, for example, the developer of a subdivision submits a preliminary plan covering 100 lots but initially only 50 are finally approved, the 50 lot portion is a section of the subdivision. If the residential subdivision contains sections, the percentage of lot sales required by condition (3) must be met by every section of the subdivision and not just the section in which the distribution facilities are to be installed. In cases where overhead installation would be permissible in accordance with condition (3) (paragraph (3) of this subdivision), except that less than five years have elapsed and the utility has reason to believe that the residential subdivision will not be developed sufficiently soon to permit the orderly utilization of underground lines installed to serve the initial applicant(s), the utility may petition the Commission to allow overhead installation. Such petition shall set forth the relevant economic, engineering, or environmental factors. The petition shall be granted or denied based on those factors. [Notwithstanding the foregoing provisions, if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 99.2(b)-(e) of this Part shall apply.] If the residential subdivision is located within the

Adirondack Park, the utility shall send a copy of the petition to the Adirondack Park Agency.

(f) If a utility receives an application for service within a residential subdivision which is governed by the provisions of subdivision (b) of this section, and the per-foot cost of installing the necessary distribution lines, service lines and appurtenant facilities (other than those accounted for in Accounts 368 and 370) will be greater than two times the cost of installing such facilities as calculated using the applicable charges per foot filed pursuant to [section] § 98.6(b) (1) of this Title and as set forth in the utility's tariff, the utility or applicant may petition the Secretary of the Commission to allow overhead installation.[, which] Such petition shall be filed in accordance with the requirements of § 3.5 of this Title and set forth the relevant economic, engineering, or environmental factors. The petition shall be reviewed by staff. [Staff] The Secretary shall notify the petitioner within 60 days of receipt of the petition either that the petition is granted or that staff objects to it. If staff objects, the petition shall be referred to the Commission for further review. The petition shall be granted or denied based on economic, engineering, or environmental factors. [If the necessary facilities are proposed to be in a VSR, the procedures set forth in section 99.2(b)-(e) of this Title shall apply.] If the residential subdivision is located within the Adirondack Park, the utility shall send a copy of the petition to the Adirondack Park Agency.

§ 100.5 Special conditions

(a) This section governs the new construction of distribution lines, service lines and appurtenant facilities performed pursuant to this Part.

(b) In unusual circumstances when the application of this Part appears impracticable or unjust to either party, or discriminatory to other customers, the utility providing service or the applicant may file a petition, [the secretary of the Commission] in accordance with the requirements of § 3.5 of this Title, for a special ruling or for the approval of special conditions which may be mutually agreed upon before construction is commenced, which petition shall set forth relevant economic, engineering, and environmental factors.

(c) If the utility or the applicant believes that the new construction of underground distribution lines, service lines or

appurtenant facilities within a residential subdivision would be less environmentally desirable than the new construction of overhead facilities, it may request that the [s]Secretary of the Commission grant an exception. [Three copies of] [t] The request shall be sent [by certified mail] to the [s]Secretary in accordance with the requirements of § 3.5 of this Title. The request shall:

(1) as between overhead and underground construction, compare the probable environmental effects associated with the residential subdivision and any economic, engineering, or other factors considered pertinent to the case by the utility or applicant to be served;

(2) for those instances where visual values would be diminished by underground construction, indicate factors bearing on probable retention of significant flora, including the utility's practice with respect to trimming trees in the vicinity of the overhead facilities;

(3) be mailed to the Adirondack Park agency, whenever the request will involve construction within the Adirondack Park; and

(4) be reviewed by staff. [Staff will] The Secretary shall notify the utility within 60 days of receipt of the request either that the request is granted or that it objects to the request. If staff objects, the request shall be referred to the Commission for further review. Requests and petitions shall be granted or denied based on environmental, economic or engineering factors. [If the necessary facilities are proposed to be in a VSR, the procedures set forth in section 99.2(b)-(e) of this Title shall apply.]

(d) Service to a residential subdivision may be supplied overhead under the following circumstances:

(1) if no governmental authority having jurisdiction to do so has required undergrounding and the utility can provide service to the entire subdivision:

(i) by extending its facilities no more than 600 feet in a cul-de-sac where a portion of the street within the subdivision is served by overhead facilities within or at the entrance of the cul-de-sac;

(ii) by connecting an area between existing overhead facilities for a distance of 1,200 feet or less;

Note: In order to determine whether 1,200 feet or more of facilities must be constructed to connect existing overhead facilities, the measurement should be along the route of construction. This will usually be the street within the residential subdivision.

(2) if no governmental authority having jurisdiction to do so has required undergrounding, by installing service lines to new applicants from existing overhead lines.

(e) Where a utility constructs overhead lines because of reasons in paragraph (1) of subdivision (d) of this section, it shall report such overhead construction to the [c]Commission quarterly along with a description of the project. [Notwithstanding the provisions of subdivision (d) of this section, if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 99.2(b)-(e) of this Title shall apply.]

(f) Where a one-pole extension, including but not limited to road crossing pole extensions, would enable an existing overhead distribution line to be connected to a proposed distribution line in a residential subdivision, such extension may be installed overhead, rather than underground[; provided, however, that if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 99.2(b)-(e) of this Title shall apply].

Part 105 - Electric Utility Emergency Plans

§ 105.3 Submission of electric emergency plans

Each electric corporation shall file, in accordance with the requirements of § 3.5 of this Title, with the Commission an electric emergency plan¹⁵ that addresses storms, as well as other causes of electrical emergencies with storm-like characteristics, and that complies with the requirements of section 105.4 of this Part. On or before April 1st of each year or on such other date as the Commission may prescribe, each electric corporation shall file, in accordance with the requirements of § 3.5 of this Title, such amendments to its emergency plan as it deems necessary, or as the Commission may require, to maintain a high level of preparedness, or a statement that no amendments are contemplated. In any event, by April 1st of each year, each electric corporation shall certify in a report [to the Commission] filed with the Secretary that within the past 12 months, it has taken the following actions:

(a) periodically verified telephone contacts with and updated its lists of names of internal and external contact persons identified in section 105.4(b)(5) of this Part; and

(b) conducted at least one storm drill or emergency exercise involving key company personnel assigned service restoration responsibilities. Submissions made under this section shall [include two copies of all documents and] be sent to the Director of the [Power Division] Office of Electric, Gas and Water. Each electric corporation shall make available for public inspection its currently effective system-wide electric emergency plan at its principal corporate headquarters. Those corporations that have developed customized plans for individual operating areas shall make a currently effective customized plan available for public inspection at the principal offices of each operating area.

¹⁵ Any corporation that has regional or division plans shall make amendments to such operating area plans as are necessary to have those plans conform with any system-wide plan. However, a corporation that has a corporate plan that meets the requirements of this Part and provides the framework for regional plans may elect to file only the corporate plan with the Commission, provided it certify that the regional plans have been updated to comply with the corporate plan and that the requirements of § 105.3(a) and (b) of this Part have been met for each of the regional plans.

Subchapter E Records; Reports

**Part 153 - Retention by Electric Corporations of Records at
Principal Office**

§ 153.2 Notice of transfer

No such accounts, books, contracts, records, documents and papers shall be transferred from the principal office of such corporation, company, association, joint-stock association, partnership and person under the jurisdiction of this [c]Commission until notice of such transfer has been [submitted] filed, in accordance with the requirements of § 3.5 of this Title, to the [c]Commission and approval thereof granted.

Subchapter G: Miscellaneous

Part 215 - Utility Contract and Procurement Procedures

§ 215.1 Utility contract and procurement procedures

(a) Every electric[, gas and steam] corporation subject to the jurisdiction of this [c]Commission with annual gross operating revenues in excess of \$ 5,000,000 shall file, [with this commission three copies] in accordance with the requirements of § 3.5 of this Title, with this Commission the [its] procedures which govern the contracting for and procurement of services, equipment or materials to be used in its utility operations. The[se] statement[s] shall:

(1) Describe the circumstances in which cost estimates will be prepared and the procedures for awarding a contract which exceeds such an estimate. Such estimates, when prepared:

(i) Shall be related to market conditions and trends as well as the utility's own experience; and

(ii) Where competitive bidding is employed, shall remain confidential until after the bids are opened.

(2) Where competitive bidding is employed, specify the procedures used in preparing and maintaining lists of qualified

bidders by geographical area, type of material or service provided, and degree of capability, including:

(i) The criteria used for including or excluding bidders;

(ii) A description of the circumstances in which all bidders on such a list will not be solicited in instances where the utility uses competitive bidding; and

(iii) A provision that in the absence of such a list, all requests to be allowed to bid[, which] that are not honored, shall be reviewed within the utility.

(3) Where competitive bidding is employed, specify the procedure to be employed to [insure] ensure that sealed bids are opened at the time and place specified.

(4) Specify the procedure employed in making awards in the absence of bids[,] or, where competitive bidding is employed, to a person other than the low bidder.

(5) Specify the procedures employed in reviewing contract expenditures, relating such expenditures to any cost estimate, the amount of the award and existing market conditions.

(6) Include a requirement for disclosure to the utility of any ownership or beneficial interest in potential suppliers by employees involved in specifying or procuring services, equipment and materials[; and], which requirement shall provide that no employee in the purchasing department nor anyone with authority to review or approve a purchasing decision shall have such an interest, except in accordance with such rules as the utility may develop and file with this [c]Commission.

Part 216 - Contracts or Agreements for the Construction, Improvement, Extension or Maintenance of Utility Plants

§ 216.1 Filing of proposed contract

(a) Every public utility company subject to the jurisdiction of this [c]Commission shall file, in accordance with the requirements of § 3.5 of this Title, with this [c]Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the

payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this [c]Commission for 30 days, or until the [c]Commission has notified the utility that such contract or agreement may be made effective immediately. If [this commission,] during [said] the 30 day period, [of 30 days, shall determine that] the Commission determines that it is in the public interest for [requires that] the contract or agreement for the work proposed to be performed [shall] to be let after public bidding, the Commission will [and shall so] notify the public utility company, and the filed contract or agreement [shall] will not become effective[,]. In such circumstances [but] the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of [this] the [c]Commission.

(b) When the accumulated amount of all other such contracts or agreements awarded to a single contractor in any calendar year has exceeded \$100,000, a list of such contracts, including any other offers received, shall be filed, in accordance with the requirements of § 3.5 of this Title, with [this] the [c]ommission by March 1 of the succeeding year.

§ 216.2 Subcontract on cost-plus basis

In view of the fact that a so-called subcontract covering any part of the work to be performed under a cost-plus contract or agreement entered into by a public utility company is, in effect, the contract or agreement of the public utility company within the meaning of [section]§ 115 of the Public Service Law, every such subcontract on a cost-plus basis, proposed to be let under a principal contract or agreement which is subject to [section]§ 216.1 hereof, shall be filed, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission in accordance with the requirements of provisions of such section. All such contracts or agreements shall contain suitable provisions to give effect to the provisions [hereof] of this Part. This section shall not apply to a subcontract which provides by its terms that the maximum payment thereunder shall not exceed the sum of \$5,000.

§ 216.3 Emergency contract

In case a storm, flood, accident or similar emergency requires that a contract or agreement be made without complying with the foregoing provisions of this Part[,] in order to maintain or restore the company's service, immediate notice shall be given to the [c]Commission by tele[gram]phone of the making of such contract or agreement, and a copy thereof shall be filed, in accordance with the requirements of § 3.5 of this Title, as soon as possible, but not later than 10 days after the making thereof, and such contract or agreement shall be exempted from the other provisions of this Part.

CHAPTER III: Gas Utilities
Subchapter A: Service

Part 227 - Approval of Types of Gas Meters and Accessories

§ 227.3 Application for approval

(a) An application for approval shall be [submitted] filed by the first utility intending to use the meter or accessory in New York [State. Three copies of such application shall be filed] with the [s]Secretary to the [c]Commission, in accordance with the requirements of § 3.5 of this Title.

(b) An application for approval shall contain:

- (1) name and address of applicant;
- (2) name and address of manufacturer;
- (3) manufacturer's type designation;
- (4) complete technical description covering construction details, materials and principles of operation;
- (5) test data observed and/or prepared by the applicant;
- (6) test data certified by the manufacturer;
- (7) photographs (8 X 10 inches, exploded view) and/or manufacturer's drawings;

(8) the general customer category or specific application for which the utility intends to use the meter or accessory; and

(9) the approximate cost per unit.

Subchapter E Records; Reports

Part 293 - Retention by Gas Corporations of Records at Principal Office

§ 293.2 Notice of transfer

No such accounts, books, contracts, records, documents and papers shall be transferred from the principal office of such corporation, company, association, joint stock association, partnership and person under the jurisdiction of this [c]Commission until notice of such transfer has been [submitted]filed, in accordance with the requirements of § 3.5 of this Title, to the [c]Commission and approval thereof granted.

CHAPTER III: Gas Utilities

Subchapter G: Miscellaneous

Part 350 - Utility Contract and Procurement Procedures

§ 350.1 Utility contract and procurement procedures

(a) Every [electric,] gas [and steam] corporation subject to the jurisdiction of this [c]Commission with annual gross operating revenues in excess of \$5,000,000 shall file, [with this commission three copies] in accordance with the requirements of § 3.5 of this Title, with this Commission the [its] procedures which govern the contracting for and procurement of services, equipment or materials to be used in its utility operations. The[se] statement[s] shall:

(1) Describe the circumstances in which cost estimates will be prepared and the procedures for awarding a contract which exceeds such an estimate. Such estimates, when prepared:

(i) shall be related to market conditions and trends as well as the utility's own experience; and

(ii) where competitive bidding is employed, shall remain confidential until after the bids are opened.

(2) Where competitive bidding is employed, specify the procedures used in preparing and maintaining lists of qualified bidders by geographical area, type of material or service provided, and degree of capability, including:

(i) the criteria used for including or excluding bidders;

(ii) a description of the circumstances in which all bidders on such a list will not be solicited in instances where the utility uses competitive bidding; and

(iii) a provision that in the absence of such a list, all requests to be allowed to bid[, which] that are not honored, shall be reviewed within the utility.

(3) Where competitive bidding is employed, specify the procedure to be employed to [insure] ensure that sealed bids are opened at the time and place specified.

(4) Specify the procedure employed in making awards in the absence of bids[,] or, where competitive bidding is employed, to a person other than the low bidder.

(5) Specify the procedures employed in reviewing contract expenditures, relating such expenditures to any cost estimate, the amount of the award and existing market conditions.

(6) Include a requirement for disclosure to the utility of any ownership or beneficial interest in potential suppliers by employees involved in specifying or procuring services, equipment and material[; and] which requirement shall provide that no employee in the purchasing department nor anyone with authority to review or approve a purchasing decision shall have such an interest except in accordance with such rules as the utility may develop and file with this [c]Commission.

**Part 351 - Contracts or Agreements for the Construction,
Improvement, Extension or Maintenance of Utility Plants**

§ Filing of proposed contract

(a) Every public utility company subject to the jurisdiction of this [c]Commission shall file, in accordance with the requirement of § 3.5 of this Title, with this [c]Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this [c]Commission for 30 days, or until the [c]Commission has notified the utility that such contract or agreement may be made effective immediately. If [this commission,] during [said] the 30 day period, [of 30 days] the Commission determines that it is in[, shall determine that] the public interest for [requires that] the contract or agreement for the work proposed to be performed shall be let after public bidding, the Commission will [and shall so] notify the public utility company, and the filed contract or agreement [shall]will not become effective[,]. In such circumstances [but] the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of [this]the [c]Commission.

(b) When the accumulated amount of all other such contracts or agreements awarded to a single contractor in any calendar year has exceeded \$100,000, a list of such contracts, including any other offers received, shall be filed, in accordance with the requirements of § 3.5 of this Title, with [this]the [c]Commission by March 1 of the succeeding year.

§ 351.2 Subcontract on cost-plus basis

In view of the fact that a so-called subcontract covering any part of the work to be performed under a cost-plus contract or agreement entered into by a public utility company is, in effect, the contract or agreement of the public utility company within the meaning of [section]§ 115 of the Public Service Law, every such subcontract on a cost-plus basis, proposed to be let under a principal contract or agreement which is subject to

[section]§ 351.1 hereof, shall be filed, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission in accordance with the requirements of provisions of such section. All such contracts or agreements shall contain suitable provisions to give effect to the provisions [hereof] of this Part. This section shall not apply to a subcontract which provides by its terms that the maximum payment thereunder shall not exceed the sum of \$5,000.

§ 351.3 Emergency contract

In case a storm, flood, accident or similar emergency requires that a contract or agreement be made without complying with the foregoing provisions of this Part[,] in order to maintain or restore the company's service, immediate notice shall be given to the [c]Commission by [telegram]telephone of the making of such contract or agreement, and a copy thereof shall be filed in accordance with the requirements of § 3.5 of this Title, as soon as possible, but not later than 10 days after the making thereof, and such contract or agreement shall be exempted from the other provisions of this Part.

CHAPTER IV: Steam Utilities **Subchapter C: Safety**

Part 420 - Distribution of Steam

§ 420.6 Customer education and information program

(a) Each steam corporation shall initiate and maintain on a continuing basis a satisfactory program for customer education and information designed to assist its customers, and appropriate government organizations, in the recognition of steam emergency conditions and situations, and to impress upon them the need for, and means by which, the steam corporation can be given notification of such situations.

(b) The program and the media used must be as comprehensive as necessary to reach all areas in which steam is distributed.

(c) During January of each year, each steam corporation shall [submit] file with the Secretary, in accordance with the requirements of § 3.5 of this Title, [to the Albany office of the Gas Division of the New York State Department of Public Service two copies of] a current description of its customer

education and information program, including a detailed statement of the means of its implementation and samples of all descriptive literature and other educational aids.

Subchapter E Records; Reports

Part 442 - Retention by Steam Corporations of Records at Principal Office

§ 442.2 Notice of transfer

No such accounts, books, contracts, records, documents and papers shall be transferred from the principal office of such corporation, company, association, joint stock association, partnership and person under the jurisdiction of this [c]Commission until notice of such transfer has been [submitted] filed, in accordance with the requirements of § 3.5 of this Title, to the [c]Commission and approval thereof granted.

Subchapter G: Miscellaneous

Part 480 - Utility Contract and Procurement Procedures

§ 480.1 Utility contract and procurement procedures

(a) Every [electric, gas and] steam corporation subject to the jurisdiction of this [c]Commission with annual gross operating revenues in excess of \$ 5,000,000 shall file, in accordance with the requirements of § 3.5 of this Title, with this [c]Commission [three copies of its] the procedures which govern the contracting for and procurement of services, equipment or materials to be used in its utility operations. The[se] statement[s] shall:

(1) Describe the circumstances in which cost estimates will be prepared and the procedures for awarding a contract which exceeds such an estimate. Such estimates, when prepared:

(i) Shall be related to market conditions and trends as well as the utility's own experience; and

(ii) Where competitive bidding is employed, shall remain confidential until after the bids are opened.

(2) Where competitive bidding is employed, specify the procedures used in preparing and maintaining lists of qualified bidders by geographical area, type of material or service provided, and degree of capability, including:

(i) The criteria used for including or excluding bidders;

(ii) A description of the circumstances in which all bidders on such a list will not be solicited in instances where the utility uses competitive bidding; and

(iii) A provision that in the absence of such a list, all requests to be allowed to bid[, which] that are not honored, shall be reviewed within the utility.

(3) Where competitive bidding is employed, specify the procedure to be employed to [insure] ensure that sealed bids are opened at the time and place specified.

(4) Specify the procedure employed in making awards in the absence of bids[, or, where competitive bidding is employed, to a person other than the low bidder.

(5) Specify the procedures employed in reviewing contract expenditures, relating such expenditures to any cost estimate, the amount of the award and existing market conditions.

(6) Include a requirement for disclosure to the utility of any ownership or beneficial interest in potential suppliers by employees involved in specifying or procuring services, equipment and materials, which requirement[; and] shall provide that no employee in the purchasing department nor anyone with authority to review or approve a purchasing decision shall have such an interest, except in accordance with such rules as the utility may develop and file with this [c]Commission.

Part 481 - Contracts or Agreements for the Construction, Improvement, Extension or Maintenance of Utility Plants

§ 481.1 Filing of proposed contract.

(a) Every public utility company subject to the jurisdiction of this [c]Commission shall file, in accordance with the requirements of § 3.5 of this Title, with this

[c]Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this [c]Commission for 30 days, or until the [c]Commission has notified the utility that such contract or agreement may be made effective immediately. If [this commission,] during [said] the 30 day period, [of 30 days, shall determine that] the Commission determines that it is in the public interest for [requires that] the contract or agreement for the work proposed to be performed [shall] to be let after public bidding, the Commission will [and shall so] notify the public utility company, and the filed contract or agreement [shall] will not become effective[,]. In such circumstances [but] the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of [this] the [c]Commission.

(b) When the accumulated amount of all other such contracts or agreements awarded to a single contractor in any calendar year has exceeded \$100,000, a list of such contracts, including any other offers received, shall be filed, in accordance with the requirements of § 3.5 of this Title, with [this] the [c]ommission by March 1 of the succeeding year.

§ 481.2 Subcontract on cost-plus basis

In view of the fact that a so-called subcontract covering any part of the work to be performed under a cost-plus contract or agreement entered into by a public utility company is, in effect, the contract or agreement of the public utility company within the meaning of [section]§ 115 of the Public Service Law, every such subcontract on a cost-plus basis, proposed to be let under a principal contract or agreement which is subject to [section]§ 481.1 hereof, shall be filed, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission in accordance with the requirements of provisions of such section. All such contracts or agreements shall contain suitable provisions to give effect to the provisions [hereof] of this Part. This section shall not apply to a subcontract which provides by its terms that the maximum payment thereunder shall not exceed the sum of \$5,000.

§ 481.3 Emergency contract

In case a storm, flood, accident or similar emergency requires that a contract or agreement be made without complying with the foregoing provisions of this Part[,] in order to maintain or restore the company's service, immediate notice shall be given to the [c]Commission by tele[gram]phone of the making of such contract or agreement, and a copy thereof shall be filed, in accordance with the requirements of § 3.5 of this Title, as soon as possible, but not later than 10 days after the making thereof, and such contract or agreement shall be exempted from the other provisions of this Part.

CHAPTER V: Waterworks Corporations
Subchapter A: Service

Part 500 - Meter Approval; Testing of Meters; Reports of Testing

§ 500.3 Approval of meters and meter reading accessories

(a) Definitions. Unless the specific context otherwise requires, as used in this Part:

(1) Meter - any meter testing equipment or measurement device used for the determination of the units of water furnished.

(2) Accessory - any meter reading device attached to the meter used to display, transmit or adjust the reading of a meter index.

(3) Acceptable devices - those types or models of meters or accessories, eligible to be submitted for approval, that conform to requirements intended to determine their reliability and acceptable accuracy insofar as they can be demonstrated by tests; the meter or accessory shall meet or exceed staff designated requirements.

(4) Approved devices - those types or models of meters or accessories which have been approved by the Commission for use in customer billing and in the general operations of a water utility plant.

(b) Selection of devices for testing. (1) One or more units of equipment covered by the application, as determined and

selected by staff, shall be made available for testing and may be retained for such purpose by the [c]Commission. Such units will be intended for actual use and not include experimental models.

(c) Application of approval.

(1) An application for approval shall be [submitted] filed by the first utility intending to use the meter or accessory in New York [State]. [Three copies of such] The application shall be filed, in accordance with the requirements of § 3.5 of this Title, with the Secretary to[*] the Commission.

(2) An application for approval shall contain:

- (i) name and address of applicant;
- (ii) name and address of manufacturer;
- (iii) manufacturer's type or model designation;
- (iv) complete technical description covering construction details and materials;
- (v) test data observed and/or prepared by the applicant;
- (vi) test data certified by the manufacturer;
- (vii) photographs (8" x 10" exploded view) and/or manufacturer's drawings;
- (viii) the general customer category or specific application for which the utility intends to use the meter or accessory;
- (ix) the approximate cost per unit; and
- (x) certification of correctness and completeness of application by an officer of the applicant.

(d) Modification of approved devices.

(1) Permission to use an approved device is effective only for those types of models which are of the same design and construction as the type or model approved. If the manufacturer of an approved device changes its materials, construction, or design in a manner that may affect its operation, accuracy or safety, the sponsoring utility or the utility intending to use

the modified device shall notify the Commission staff, specifying the changes.

(2) Department staff will evaluate the effects of the modification and determine whether the device remains acceptable[,] and, if so, whether the existing approval is adequate or should be amended, and will so notify the utility.

(e) Strength and capacity of meters.

(1) Strength. New meters shall be of sufficient strength to withstand without damage a working-pressure test of 150 pounds per square inch.

(2) Capacity. New meters shall show a loss of head not to exceed the following amounts when the rate of flow for delivery is that given in the following Table, viz.: for displacement and current meters, 15 pounds per square inch; for compound meters, 20 pounds per square inch; for fire-service meters, 4 pounds per square inch.

Size	DELIVERY: GALLONS PER MINUTE			
	Displacement	Current	Compound	Fire-Service
Inches				
1/2	15	-----	-----	-----
1/2 X 3/4	15	-----	-----	-----
5/8	20	-----	-----	-----
5/8 X 3/4	20	-----	-----	-----
3/4	30	-----	-----	-----
1	50	-----	-----	-----
1 1/2	100	100	100	-----
2	160	120	160	-----
3	315	300	320	400
4	500	600	500	700
6	1,000	1,350	1,000	1,600
8	-----	1,800	1,600	2,800
10	-----	2,400	2,300	4,400
1	-----	3,375	3,100	6,400
2	-----			

Subchapter D: Records; Reports

Part 540 - Annual Reports-Municipal Water Systems

§ 540.1 Filing of annual reports

[(a)] Each municipal water system is hereby directed to file, in accordance with the requirements of § 3.5 of this Title, to the [at the office of the Public Service] Commission [in the city of Albany, a copy of] the annual report of its division, bureau or department of water, within two months succeeding the close of its fiscal year, commencing with that for 1931.

[(b)] Each such municipality is requested to file its said report in duplicate.]

Part 543 - Retention by Waterworks Corporations of Records at Principal Office

§ 543.2 Notice of transfer

No such accounts, books, contracts, records, documents and papers shall be transferred from the principal office of such corporation, company, association, joint stock association, partnership and person under the jurisdiction of this [c]Commission until notice of such transfer has been [submitted to] filed, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission and approval thereof granted.

Part 545 - Accounts, Records and Reports of General Business Corporations Providing Incidental Utility Service

§ 545.1 Petition for exemption from requirements

Any general business corporation supplying utility service where such utility service is wholly subsidiary and incidental to its primary business and is minor in amount as compared with its nonutility operations, may [submit to this] file, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission a properly verified petition setting forth the nature and extent of both its general business and its utility business, the number of customers served, the amount of revenue

received from such business, and the reasons why it is believed it is not necessary in the proper regulation of its utility operations that its accounts and records be kept pursuant to the applicable system of accounts prescribed by this [c]Commission, or that it file with this [c]Commission annual reports in the form provided for applicable utilities.

§ 545.2 Action on petition

Upon the receipt of such a petition the [c]Commission will conduct a public hearing or make such other investigation as it shall deem necessary, and if it be found that proper and adequate regulation does not require the keeping of accounts in compliance with the system of accounts applicable to corporations primarily engaged in the public utility business or the filing of the type of annual reports required to be filed by such utility corporations, the petitioning corporation may be relieved from keeping its records and accounts in accordance with the applicable system of accounts prescribed by this [c]Commission but instead be authorized to keep only such accounts as shall be directed, and may be further authorized to file, in accordance with the requirements of § 3.5 of this Title, such form of annual report as may be prescribed.

Subchapter F: Miscellaneous

Part 585 - Utility Contract and Procurement Procedures

§ 585.1 Utility contract and procurement procedures

(a) Every water-works corporation subject to the jurisdiction of this [c]Commission with annual gross operating revenues in excess of \$ 1,500,000 shall file, in accordance with the requirements of § 3.5 of this Title, with this [c]Commission [three copies of its] the procedures which govern the contracting for and procurement of services, equipment or materials to be used in its utility operations. The[se] statement[s] shall:

(1) Describe the circumstances in which cost estimates will be prepared and the procedures for awarding a contract which exceeds such an estimate. Such estimates, when prepared:

(i) Shall be related to market conditions and trends as well as the utility's own experience; and

(ii) Where competitive bidding is employed, shall remain confidential until after the bids are opened.

(2) Where competitive bidding is employed, specify the procedures used in preparing and maintaining lists of qualified bidders by geographical area, type of material or service provided, and degree of capability, including:

(i) The criteria used for including or excluding bidders;

(ii) A description of the circumstances in which all bidders on such a list not be solicited in instances where the utility uses competitive bidding; and

(iii) A provision that in the absence of such a list, all requests to be allowed to bid[, which] that are not honored, shall be reviewed within the utility.

(3) Where competitive bidding is employed, specify the procedure to be employed to [insure] ensure that sealed bids are opened at the time and place specified.

(4) Specify the procedure employed in making awards in the absence of bids[,] or, where competitive bidding is employed, to a person other than the low bidder.

(5) Specify the procedures employed in reviewing contract expenditures, relating such expenditures to any cost estimate, the amount of the award and existing market conditions.

(6) Include a requirement for disclosure to the utility of any ownership or beneficial interest in potential suppliers by employees involved in specifying or procuring services, equipment and materials, which requirement[; and] shall provide that no employee in the purchasing department nor anyone with authority to review or approve a purchasing decision shall have such an interest, except in accordance with such rules as the utility may develop and file with this [c]Commission.

**Part 586 - Contracts or Agreements for the Construction,
Improvement, Extension or Maintenance of Utility Plants**

§ Filing of proposed contract

(a) Every public utility company subject to the jurisdiction of this [c]Commission shall file, in accordance with the requirements of § 3.5 of this Title, with this [c]Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this [c]Commission for 30 days, or until the [c]Commission has notified the utility that such contract or agreement may be made effective immediately. If [this commission,] during [said] the 30 day period, [of 30 days, shall determine that] the Commission determines that it is in the public interest for [requires that] the contract or agreement for the work proposed to be performed [shall] to be let after public bidding, the Commission will [and shall so] notify the public utility company, and the filed contract or agreement [shall] will not become effective[,]. In such circumstances [but] the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of [this] the [c]Commission.

(b) When the accumulated amount of all other such contracts or agreements awarded to a single contractor in any calendar year has exceeded \$100,000, a list of such contracts, including any other offers received, shall be filed, in accordance with the requirements of § 3.5 of this Title, with [this] the [c]ommission by March 1 of the succeeding year.

§ 586.2 Subcontract on cost-plus basis

In view of the fact that a so-called subcontract covering any part of the work to be performed under a cost-plus contract or agreement entered into by a public utility company is, in effect, the contract or agreement of the public utility company within the meaning of [section]§ 115 of the Public Service Law, every such subcontract on a cost-plus basis, proposed to be let under a principal contract or agreement which is subject to [section]§ 586.1 hereof, shall be filed, in accordance with the

requirements of § 3.5 of this Title, with the [c]Commission in accordance with the requirements of provisions of such section. All such contracts or agreements shall contain suitable provisions to give effect to the provisions [hereof] of this Part. This section shall not apply to a subcontract which provides by its terms that the maximum payment thereunder shall not exceed the sum of \$5,000.

§ 586.3 Emergency contract

In case a storm, flood, accident or similar emergency requires that a contract or agreement be made without complying the foregoing provisions of this Part[,] in order to maintain or restore the company's service, immediate notice shall be given to the [c]Commission by [telegram]telephone of the making of such contract or agreement, and a copy thereof shall be filed, in accordance with the requirements of § 3.5 of this Title, as soon as possible, but not later than 10 days after the making thereof, and such contract or agreement shall be exempted from the other provisions of this Part.

CHAPTER VI: Telephone and Telegraph Corporations **Subchapter A: Service**

Part 604 - New Construction of Distribution Facilities in Residential Subdivisions

§ 604.3 New construction of underground facilities in residential subdivisions

(a) This Part applies to the new construction of distribution and feeder facilities within residential subdivisions. Nothing in this Part shall be construed to compromise the ability of a state or local agency to require underground facilities in the exercise of its land use or environmental protection authority.

(b) Any distribution or feeder facility necessary to furnish permanent telephone service to one or more multiple occupancy buildings (including four or more dwelling units) shall be installed underground and any such facility necessary to furnish permanent telephone service within a subdivision in which it is planned to build five or more new residential buildings shall be installed underground if:

(1) the subdivision will require no more than 200 trench feet of facilities per dwelling unit planned within the subdivision; or

(2) a utility's tariff provides for such underground service without contribution; or

(3) a governmental authority with jurisdiction to do so has required undergrounding; or

(4) an applicant requests undergrounding.

Note: The number of dwelling units is the criterion to be used to determine whether installation is required to be underground. In order to ascertain the number of dwelling units, it is necessary to consult the approved subdivision map to determine how many dwelling units are planned. Each lot shown on the map should, in the case of a single family dwelling, be considered to contain one dwelling unit unless there is sufficient contrary evidence to render it unlikely that each lot will contain a separate dwelling unit (e.g., a foundation is constructed occupying two lots). The measurement of trench footage should be the shortest distance required to serve the homes within the subdivision, consistent with the utility's obligation to provide safe and adequate service.

(c) Upon receipt of a proper application, the utility shall inform the electric company and cable television company serving the area in which the residential subdivision is located of the receipt of such application. Upon compliance by the applicant with the requirements of this Part, the utility shall install underground telephone distribution facilities with sufficient capacity and suitable material which, in its judgment, will assure that the applicant will receive safe and adequate telephone service. Such installation shall be undertaken by the utility as soon as is reasonably possible after receipt of a proper application and shall be made at a time appropriate to render service. Construction will not be delayed by the utility so that the applicant will be delayed in the sale or other disposal of the buildings, or lots, except where such delay is caused by strikes, fire, flood, inclement weather, unavailability of materials, civil disorders, or other conditions beyond the control of the utility.

(d) After distribution or feeder facilities are installed underground in a residential subdivision no overhead circuits shall be installed by a utility within such subdivision.

(e) The utility's tariff must permit the applicant at least to excavate the trench necessary for the underground installation of distribution or feeder facilities within the subdivision, at the applicant's cost and to the utility's specifications.

(f) A utility may install overhead distribution or feeder facilities in a residential subdivision or a section thereof otherwise required to have underground distribution facilities in accordance with subdivision (b) of this section when:

(1) the developer of the subdivision is not primarily engaged in the construction of dwelling units within the subdivision;

(2) no governmental authority having jurisdiction to do so has required underground installation; and

(3) either:

(i) five years have elapsed from the sale of the first lot within the subdivision to the first application for service and the utility has no indication that there will be other new requests for service in the subdivision within six months;

(ii) five years have elapsed from the date of final approval of the subdivision or section thereof, and less than 25 percent of the lots have been sold in the subdivision and every section thereof, except where ten percent or more of the lots in the subdivision or any section thereof have been sold within the last two years;

In cases where overhead installation would be permissible in accordance with condition (3) (paragraph [3] of this subdivision) except that less than five years have elapsed and the utility has reason to believe that the subdivision will not be developed sufficiently soon to permit the orderly utilization of underground facilities installed to serve the initial subscriber(s), the utility may petition the commission to allow overhead installation, which petition shall set forth the relevant economic, engineering and environmental factors.

Note: The term final approval refers to authorization of a residential subdivision by governmental authorities having jurisdiction. A residential subdivision is finally approved when all necessary governmental consents have been obtained to allow the developer of the subdivision to sell lots and/or build residences. If a subdivision needs only be

approved by a county health department the final approval of that agency, in accordance with its regulations, when received is final. If the town planning board must give its consent as well, final approval is not obtained until the board and the health department have completed their processes of authorization. A section of a subdivision is the smallest unit of a subdivision given final governmental approval. If, for example, the developer of a subdivision submits a preliminary plan covering 100 lots but initially only 50 are finally approved, the 50 lot portion is a section of the subdivision. If the subdivision contains sections, the percentage of lot sales required by condition (3) must be met by every section of the subdivision and not just the section in which the distribution facilities are to be installed. [Notwithstanding the foregoing provisions, if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b)-(e) of this Title shall apply.]

(g) If a utility receives an application for service within a residential subdivision which is governed by the provisions of subdivision (b) of this section and the per-foot cost of installing the necessary distribution or feeder facilities will be greater than two times the cost per foot of installing overhead distribution or feeder facilities, the utility or applicant may petition the Secretary of the Commission to allow overhead installation.[, which] Such petition shall be filed in accordance with the requirements of § 3.5 of this Title and set forth the relevant economic, engineering and environmental factors. The petition shall be reviewed by staff. [Staff] The Secretary shall notify the petitioner within 60 days of receipt of the petition either that the petition is granted or that staff objects to it. If staff objects, the petition shall be referred to the commission for further review. The petition shall be granted or denied based on economic, engineering or environmental factors. [If the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b) through (e) of this Title shall apply]. If the residential subdivision is located within the Adirondack Park, the utility shall send a copy of the petition to the Adirondack Park Agency.

§ 604.9 Special conditions

(a) This section governs the new construction of distribution and feeder facilities performed pursuant to this Part.

(b) In unusual circumstances when the application of this Part appears impracticable or unjust to either party or

discriminatory to other customers, the utility providing service or the applicant may file a petition, in accordance with the requirements of § 3.5 of this Title, [the Secretary of the Commission] for a special ruling or for the approval of special conditions which may be mutually agreed upon before construction is commenced, which petition shall set forth relevant economic, engineering, and environmental factors.

(c) If the utility or the applicant believes that the new construction of underground distribution or feeder facilities within a residential subdivision would be less environmentally desirable than the new construction of overhead facilities, the utility or applicant may request that the [s]Secretary of the Commission grant an exception. [Three copies of] [t]The request shall be sent [by certified mail] to the [s]Secretary in accordance with the requirements of § 3.5 of this Title. The request shall:

(1) as between overhead and underground construction, compare the probable environmental effects associated with the subdivision and any economic, engineering, or other factors considered pertinent to the case;

(2) for those instances where visual values would be diminished by underground construction, indicate factors bearing on probable retention of significant flora (including the utility's practice with respect to trimming trees in a vicinity of the overhead facilities);

(3) be mailed to the Adirondack Park Agency whenever the request will involve construction within the Adirondack Park; and

(4) be reviewed by staff. [Staff will] The Secretary shall notify the utility within 60 days of receipt of the request either that the request is granted or that it objects to the request. If staff objects, the request shall be referred to the Commission for further review.

Requests and petitions shall be granted or denied based on environmental, economic and engineering factors. [If the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b) through (e) of this Title shall apply.]

(d) Service to a residential subdivision may be supplied overhead if no governmental authority having jurisdiction to do so has required underground installation and the utility can provide such service:

(1) by extending its facilities no more than 600 feet in a cul-de-sac where a portion of the street within the subdivision is served by overhead facilities within or at the entrance of the cul-de-sac;

(2) by connecting an area between existing overhead facilities for a distance of 1,200 feet or less^[16*]¹⁷;

(3) by installing drop wires to new individual applicants for service from existing overhead facilities; or

(4) where a utility constructs overhead facilities because of paragraphs (1) or (2) of this subdivision, it shall report such overhead construction to the Commission quarterly, along with a description of the project; and

[(5) notwithstanding the forgoing provisions, if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b) through (e) of this Title shall apply.]

(e) Where a one-pole extension (whether or not it crosses a road) would enable an existing overhead distribution facility to be connected to a proposed distribution facility in a residential subdivision, such extension may be installed overhead rather than underground; provided[, however, that if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b) through (e) of this Title shall apply].

Subchapter D Records; Reports

Part 641 - Annual Reports

§ 641.1 Annual report required

Except as provided in [section] § 641.2 herein, every [public utility, and every municipality operating a gas, electric or steam plant] telephone corporation[, is hereby directed and required to] shall file, in accordance with the requirements of § 3.5 of this Title, annually with this

¹⁶[* Note:] In order to determine whether 1,200 feet or more of facilities must be constructed to connect existing overhead facilities, the measurement should be along the route of construction. This will usually be the street within the residential subdivision.

[c]Commission, at the time and for the period hereinafter provided, an annual report on the form hereinafter prescribed.

§ 641.2 Utilities exempted

(a) The provisions of this Part shall not apply to telephone corporations having 25 stations or less [nor to contract carriers of passengers other than those which are also certificated omnibus operators.]

(b) Each telephone corporation having 25 stations or less is exempted from filing an annual report unless otherwise ordered by this [c]Commission.

§ 641.4 Prescribed forms

The following forms are hereby prescribed for the use of the several classes and groups of [utilities and municipalities] telephone corporations, and copies of such forms will be furnished or made available to each such [utility and municipality] corporation (see Appendix 6-A, *infra*).

§ 641.5 Period covered

Every [public utility] telephone corporation shall file, in accordance with the requirements of § 3.5 of this Title, its annual report on the basis of the calendar year[, and every municipality operating a gas, electric or steam plant on the basis of its fiscal year].

§ 641.6 Filing of additional reports

(a) [Duplicate reports shall be filed by each municipality operating a gas, electric or steam plant in the metropolitan area and by every gas, electric and water-works corporation in Classes C and D.] The "metropolitan area" shall be understood to consist of the City of New York and the following counties: Nassau, Suffolk, Orange, Rockland, Putnam and Westchester.

(b) [TriPLICATE] Electronic reports shall be filed, in accordance with the requirements of § 3.5 of this Title, by every telephone corporation in Classes A and B outside the metropolitan area described in subdivision (a) of this section.

(c) [Four]Electronic reports shall be filed, in accordance with the requirements of § 3.5 of this Title, by each telephone corporation in Classes A and B in the metropolitan area described in subdivision (a) of this section [and by every electric, gas, steam and water-works corporation in Classes A and B].

§ 641.7 Final dates for filing

Every [public utility and every municipality operating a gas, electric or steam plant] telephone corporation shall file, in accordance with the requirements of § 3.5 of this Title, each annual report as soon as possible after the end of the year covered by the report, but in no event later than the date specified herein. The final dates for filing shall be as follows:

Kind of Utility	Filing Date
[Railroad Corporations, Street Railroad Corporations and Common Carriers]	[March 31]
[Motors Carriers of Property]	[April 30]
[Steam Corporations]	[March 31]
Telephone Corporations	March 31
[Telegraph and Cable Corporations]	[March 31]
[Omnibus Corporations]	[March 31]
[Electric Corporations and Gas Corporations]	[March 31]
[Waterworks Corporations]	[March 31]
[American Telephone and Telegraph Company]	[March 31]
[Municipal Gas, Electric or Steam]	[3 months after last day of fiscal year]

CHAPTER VI: Telephone and Telegraph Corporations
Subchapter E: Uniform Systems of Accounts

Part 663 - Instructions - Telecommunications Plant Accounts

§ 663.6 Continuing property records required

(a) The continuing property records are that portion of the total property accounting system which preserves the following detailed information:

(1) the identity, vintage, location and original cost of units of property; and

(2) original and ongoing transactional data (plant account activity) in terms of such units.

(b) The continuing property records must be

(1) subject to internal accounting controls,

(2) auditable,

(3) equal in the aggregate to the total investment reflected in the financial property control accounts as well as the total of the cost allocations supporting the determination of cost-of-service at any particular point in time, and

(4) maintained throughout the life of the property.

(c) Companies shall establish and maintain continuing property records for each class of property recorded in the several plant accounts which comprise the balance sheet account 2001, Telecommunications Plant In Service, account 2002, Property Held for Future Telecommunications Use, and account 2006, Nonoperating Plant.

(d) The company shall prepare and maintain the continuing property record as follows:

(1) Not later than December 31st of the year following that in which the company becomes subject to this system of accounts, begin the preparation of a continuing property record.

(2) Complete within two years of the prescribed beginning date, continuing property records for all property as of the end of the preceding calendar year.

(3) Promptly process in the continuing property records all property changes affecting periods subsequent to initial establishment of the continuing property record.

(e) The continuing property record components (see subdivision (a), (b) and (c) of this section) shall be arranged

in conformity with the regulated plant accounts prescribed in this system of accounts as follows:

(1) The continuing property records shall be compiled on the basis of original cost (or other book cost consistent with this system of accounts). The continuing property records shall be maintained as prescribed in [section] § 663.7(b) (3) of this Part in such manner as will meet the following basic objectives:

(i) provide for the verification of property record units by physical examination;

(ii) provide for accurate accounting for retirements; and

(iii) provide data for use in connection with depreciation studies.

(f) The following additional continuing property records requirements shall be complied with by Class A companies only:

(1) The Class A continuing property records shall consist of

(i) continuing property records and

(ii) records supplemental thereto which together reveal clearly, by accounting area, the detailed and systematically summarized information necessary to meet fully the requirements of subdivisions (a) and (b) of this section, and paragraph (3) of this subdivision.

(2) The records supplemental to the continuing property records shall disclose such service designations, usage measurement criteria, apportionment factors, or other data as may be prescribed by the [c]Commission in this uniform system of accounts or other [Parts of its rules and regulations] provisions of this Title. Such data are subject to the same general controls and standards for auditability and support as are all other elements of the continuing property records.

(3) The continuing property records also shall preserve any other specific financial and cost accounting information not properly warranting separate disclosure as an account or subaccount but which is needed to support regulatory, cost, tax, management and other specific accounting information needs and requirements.

(g) Each Class A company shall notify the [c]Commission of a plan for the continuing property record as follows:

(1) Not later than December 31st of the year following that in which it becomes subject to this system of accounts, the company shall file, [with the commission two copies of] in accordance with the requirements of § 3.5 of this Title, with the Commission a complete plan of the method to be used in the compilation of a continuing property record with respect to each class of property. The plan shall include a list of proposed accounting areas accompanied by description of the boundaries of each area as defined in accordance with the requirements of [section] § 663.7(a) (1) and (2) of this Part. The plan shall also include a list of property record units proposed for use under each regulated plant account. These property record units shall be selected such that the requirements of [section] § 663.7(b) (1), (2) and (3) can be satisfied.

(2) The company shall submit to the [c]Commission [one copy of] major proposed changes in its continuing property record plan at least 30 days before the effective date of the proposed changes.

Subchapter F: Miscellaneous

Part 685 - Utility Contract and Procurement Procedures

§ 685.1 Utility contract and procurement procedures

(a) Every telephone and telegraph corporation subject to the jurisdiction of this [c]Commission with annual gross operating revenues in excess of \$ 2,000,000 shall file, in accordance with the requirements of § 3.5 of this Title, with [this]the [c]Commission [three copies of] its procedures which govern the contracting for and procurement of services, equipment or materials to be used in its utility operations. The[se] statement[s] shall:

(1) Describe the circumstances in which cost estimates will be prepared and the procedures for awarding a contract which exceeds such an estimate. Such estimates, when prepared:

(i) Shall be related to market conditions and trends as well as the utility's own experience; and

(ii) Where competitive bidding is employed, shall remain confidential until after the bids are opened.

(2) Where competitive bidding is employed, specify the procedures used in preparing and maintaining lists of qualified bidders by geographical area, type of material or service provided, and degree of capability, including:

(i) The criteria used for including or excluding bidders;

(ii) A description of the circumstances in which all bidders on such a list will not be solicited in instances where the utility uses competitive bidding; and

(iii) A provision that in the absence of such a list, all requests to be allowed to bid[, which] that are not honored, shall be reviewed within the utility.

(3) Where competitive bidding is employed, specify the procedure to be employed to [insure] ensure that sealed bids are opened at the time and place specified.

(4) Specify the procedure employed in making awards in the absence of bids[,] or, where competitive bidding is employed, to a person other than the low bidder.

(5) Specify the procedures employed in reviewing contract expenditures, relating such expenditures to any cost estimate, the amount of the award and existing market conditions.

(6) Include a requirement for disclosure to the utility of any ownership or beneficial interest in potential suppliers by employees involved in specifying or procuring services, equipment and materials, which requirement[; and] shall provide that no employee in the purchasing department nor anyone with authority to review or approve a purchasing decision shall have such an interest, except in accordance with such rules as the utility may develop and file with this [c]Commission.

Part 686 - Contracts or Agreements for the Construction, Improvement, Extension or Maintenance of Utility Plants

§ 686.1 Filing of proposed contract

(a) Every public utility company subject to the jurisdiction of this [c]Commission shall file, in accordance with the requirements of § 3.5 of this Title, with this [c]Commission one copy of every proposed cost-plus contract or agreement, including those contracts or agreements in which the payment to be made by the utility is based on time and material consumed regardless of the number of units completed, for the construction, improvement or extension of its plant, works or system exceeding in amount \$100,000 in any calendar year, and a list of any other offers received, and such contract or agreement shall not become effective until it has been on file with this [c]Commission for 30 days, or until the [c]Commission has notified the utility that such contract or agreement may be made effective immediately. If [this commission,] during [said] the 30 day period, [of 30 days, shall determine that] the Commission determines that it is in the public interest for [requires that] the contract or agreement for the work proposed to be performed [shall] to be let after public bidding, the Commission will [and shall so] notify the public utility company, and the filed contract or agreement [shall] will not become effective[,]. In such circumstances [but] the public utility shall proceed to make a public offering of the proposed work in accordance with the direction of [this] the [c]Commission.

(b) When the accumulated amount of all other such contracts or agreements awarded to a single contractor in any calendar year has exceeded \$100,000, a list of such contracts, including any other offers received, shall be filed, in accordance with the requirements of § 3.5 of this Title, with [this] the [c]Commission by March 1 of the succeeding year.

§ 686.2 Subcontract on cost-plus basis

In view of the fact that a so-called subcontract covering any part of the work to be performed under a cost-plus contract or agreement entered into by a public utility company is, in effect, the contract or agreement of the public utility company within the meaning of [section]§ 115 of the Public Service Law, every such subcontract on a cost-plus basis, proposed to be let under a principal contract or agreement which is subject to [section]§ 686.1 hereof, shall be filed, in accordance with the requirements of § 3.5 of this Title, with the [c]Commission in accordance with the requirements of provisions of such section. All such contracts or agreements shall contain suitable provisions to give effect to the provisions [hereof] of this Part. This section shall not apply to a subcontract which

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provides by its terms that the maximum payment thereunder shall not exceed the sum of \$5,000.

§ 686.3 Emergency contract

In case a storm, flood, accident or similar emergency requires that a contract or agreement be made without complying with the foregoing provisions of this Part[,] in order to maintain or restore the company's service, immediate notice shall be given to the [c]Commission by [telegram]telephone of the making of such contract or agreement, and a copy thereof shall be filed, in accordance with the requirements of § 3.5 of this Title, as soon as possible, but not later than 10 days after the making thereof, and such contract or agreement shall be exempted from the other provisions of this Part.

CHAPTER VII: Provisions Affecting Two or More Kinds of Public Service

Subchapter C: Rates and Charges

Part 720 - Construction and Filing of Tariff Schedules

Subpart 720-1
General Provisions

§ 720-1.4 Filing of Contracts

(a) Contracts between public utilities for the sale, purchase, or interchange of electricity, gas, steam, or water need not be executed according to rate schedules filed as required by [section] § 720-1.3 when such contracts are limited to service to be used by the purchasing utility in the conduct of its utility business (including supply to concessionaires who occupy space in the property of such utility and who furnish service for the convenience of the customers of said utility) or to be supplied to another public utility for use in a utility business. All other contracts for the sale, purchase, or interchange of electricity, gas, steam, or water must be executed according to the provisions in appropriate service classifications duly filed and posted. [Two copies, including one certified copy, of] [a]All such contracts not executed according to service classifications in rate schedules shall be filed, in accordance with the requirements of § 3.5 of this Title, by the purchaser with the Commission not later than 30 days after execution. If the purchaser is not subject to the jurisdiction of the Commission, such [copies]documents shall be filed by the party which is subject to the jurisdiction of the Commission. Contracts so filed shall be numbered in consecutive order by the party filing them.

(b) Contracts, which by reference include provisions of tariffs filed with the Federal Energy Regulatory Commission, shall be accompanied by copies of such provisions. Whenever revisions are made to the tariffs filed with the Federal Energy Regulatory Commission which affect the terms of the contract, these revisions shall also be filed with the contracts.

(c) [Copies of c]Contracts shall have a title page on which shall be shown the information set forth in [Section] § 720-1.5 of this Part.

Subchapter D: Records and Reports

Part 730 - PCB Inventory Reports

§ 730.1 Filing of reports

(a) Every gas or electric corporation having equipment containing 500 parts per million (ppm) or greater of polychlorinated biphenyls (PCBs), including but not limited to capacitors and transformers, shall [submit] file, in accordance with the requirements of § 3.5 of this Title, [a three copies of] a PCB inventory report to the Commission semiannually.

(b) The inventory reports shall be [submitted] filed on September 1st each year, for the reporting period January 1st through June 30th preceding, and on March 1 each year, for the period July 1st through December 31st preceding.

(c) Each gas corporation, as set forth herein, shall file with the [Commission to the attention of the Albany office of the Energy and Water Division] Secretary, in accordance with the requirements of § 3.5 of this Title, a report of each discovery in the gas distribution system of materials containing PCBs in concentrations of 50 ppm or greater, such as materials collected at custody transfer points, and the PCB concentrations found in such materials. The report[s,] shall be [filed] submitted annually [in duplicate] by February 1st of the year following the calendar year for which the report is rendered.

(d) The inventory reports referred to in subdivision (a) of this section shall include two parts: one covering PCB equipment in service as of the last day of the reporting period and one covering PCB equipment retired, stored, processed, or shipped during the reporting period.

(e) Each gas or electric corporation [submitting] filing the inventory reports referred to in subdivision (a) of this section shall also submit to the chief executive of each county and city located in its service territory a report containing the information presented for equipment and PCBs located in or transported through the county or city receiving the report.

(f) The following provisions apply in connection with the inventory reports:

(1) The term equipment means devices such as transformers, capacitors, compressors, or other equipment designed to contain oil or other fluids necessary for their operation. The term does not include items on the gas distribution system that were not designed to contain oil necessary for operation such as drips, valves, or pipelines.

(2) Materials means liquids, particulate matter, rags or other items containing PCBs.

(3) Political jurisdiction may be reported by any of the following: town, village, city, each borough of New York City, or tax district. If the report is by tax district, it shall be made clear which political jurisdiction or jurisdictions comprise each tax district.

(4) The location of PCB equipment in service may be reported by any of the following: street address, building name, line and pole number, line and vault number, pole number with street and cross-street, vault number with street and cross-street or, for gas utility equipment, by pipeline mile post, engineering station, or geographic feature. If the location is reported by pole and line number or vault number, additional information shall be available to indicate the exact location of the line or equipment. For substations and power plants, additional information shall be available to indicate the location of the equipment within each substation or power plant. The location of storage and processing facilities shall be reported by postal address and shall include, as a minimum, the political jurisdiction in which the facility is located.

(5) Size shall be expressed as volume of PCB fluid, and the PCB concentration (ppm) shall be reported. The fluid, if a dielectric, shall be identified (i.e., mineral oil, Askarel, pure PCB).

(6) Service date may be reported by any of the following: date of purchase, date of first installation, date of

last installation, date of capitalization, or date of manufacture. Date of manufacture may be reported by serial number if a key is provided which cross-references serial number to date of manufacture. For capacitors, the reported service date may be the service date for the oldest capacitor in a bank or the date that the bank was first installed. For transformers located in substations, the reported service date may be the service date for the oldest transformer installed at each substation. Each inventory report shall specify whether the reported service date is the purchase date, date of capitalization, or date of manufacture.

(7) Quantity means the number of individual units. Capacitors may be reported by bank if the number of units per bank is stated.

(8) The term in-service applies to equipment used electrically under loaded conditions, and to other equipment, such as gas compressors, on gas distribution systems. In-service equipment may also be identified as equipment recorded in the Electric Plant In Service or Gas Plant In Service accounts.

(9) The last in-service location is the last location at which the PCB equipment was in service, or the location (i.e., service center or treatment storage and disposal facility) at which the electrical equipment or material was first determined to contain 500 ppm or greater of PCBs.

(10) The retirement date reported shall be either the date on which the equipment is no longer in service or the date on which the equipment was removed from the Electric Plant In Service or Gas Plant In Service accounts.

(11) The New York State portion of the shipping route shall be described for all shipments of PCBs between storage and processing facilities and for all shipments out of State. The route description shall identify the highways used and shall identify all cities and counties traversed by the route. Shipping routes within New York City shall identify the borough or boroughs traversed.

Part 732 - Annual Reports

§ 732.3 Filing additional reports

(a) [Four reports] A report shall be filed, in accordance with the requirements of § 3.5 of this Title, by every electric, gas, steam and waterworks corporation in Classes A and B. [If an electronic medium is prescribed by the Commission, one paper copy and one electronic copy may be submitted.]

(b) [Two reports] A report shall be filed, in accordance with the requirements of § 3.5 of this Title, by each municipality operating an electric, gas or steam system and by every electric, gas or waterworks corporation in Classes C and D. [If an electronic medium is prescribed by the Commission, one paper copy and one electronic copy shall be submitted.]

CHAPTER VIII: Cable Television
Subchapter B: General

Part 897 - Applications for Commission Approval

§ 897.1 Applicability

In addition to the requirements of Part 17, of this Title, except [section] § 17.2, and provided that at least an original [and three copies] of such petition will be filed with the [s]Secretary, applications under [section] § 221 or 222 of the Public Service Law shall conform to the requirements of this Part.

§ 897.4 Transfers

An application[, including an original and seven copies of such petition, will] shall be filed, in accordance with the requirements of § 3.5 of this Title, with the [s]Secretary for approval of a transfer of control of a franchise or cable television system and shall include:

(a) the applicant's name, mailing address and telephone number;

(b) whether the proposed transfer is an asset transfer or stock transfer, and, in either case, a list of each franchise, including the name of the municipality that granted the franchise and the date thereof;

(c) a copy of the purchase and sale agreement;

(d) whether pursuant to the terms of the franchise, the proposed transfer requires municipal approval and, if so, a statement that the applicant has requested or will request approval by the municipality and will provide a copy of any municipal resolution adopted relative to such request; and

(e) a copy of FCC Form 394.