

Part 1 - Definitions and Applicability

§ 1.1 Statutory Terms

Unless the context otherwise requires, terms used in this 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 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 § 4.3(b) of this 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 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 the internet address, not that of the Commission, from which the document being served can be obtained directly, without further search, or

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

(n) in writing, written: by means of a document; an oral presentation is insufficient.

§ 1.3 Applicability

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.

Part 2 - Rules of Conduct

§ 2.1 Parties and Representatives

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.

§ 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, notice of the Secretary and ruling of a presiding officer will be filed in the principal office of the Commission, posted on the Commission's website 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 the

order issues a directive or prohibition. A certified copy of an order, or a copy bearing the seal of the Commission will be provided upon request.

(2) 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.

(b) (1) Commission documents will be served personally, electronically, by mail, or by overnight delivery service. 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.

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

§ 3.3 Waivers

(a) (1) Any filing deadline, method of filing, number of copies, or page limitation for any document required or authorized to be submitted to the Commission (other than a document submitted 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 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 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 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

(a) As used in this section, the term "document" refers to pleadings, briefs, applications, petitions, complaints, and other items offered for filing with the Secretary. The requirements of this section shall apply to all other provisions of this Title.

(b) 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) In addition to an electronic filing, any paper versions requested by the Secretary must be hand-delivered on the same or the next day or, if sent by overnight delivery service or ordinary mail, must be postmarked by midnight of the same day as the filing.

(3) When a party files only paper documents pursuant to subdivision (b)(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.

(c) A document submitted 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.

(d) Additional requirements for electronically filed documents.

(1) Documents submitted 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.

(e) A party who files a document 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 persons or entities as the Secretary may direct.

(f) 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.

(g) (1) 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.

(2) Electronic service is deemed complete upon the sending of either the document itself, or a notice of web posting which provides the address from which the document can be retrieved. If service by other means is agreed upon or authorized pursuant to paragraph (1) 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. 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) 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) 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) A document requesting the Commission to take any action requiring prior notice pursuant to the State Administrative Procedure Act shall include a draft of a notice in the form required by that statute. If the filing party is requesting the Commission to take any action on an emergency basis pursuant to

§ 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.

(k) 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 motions shall be in writing and filed with the Secretary, except that 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 the presiding officer and a copy shall be filed with the Secretary. In all other instances, motions shall be addressed to 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 unless a different time period is permitted by § 3.5(g)(2) or is otherwise established by the presiding officer or the Secretary.

(2) The response shall be filed with the Secretary and be addressed to the official to whom the motion was addressed.

(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.

§ 3.7 Rehearings

(a) Any person interested in an order of the Commission may request rehearing within 30 days of service of the order. The petition for rehearing shall 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. A response shall be filed with the Secretary, and a copy of the response 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 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 term large utility as used in this section means Class A and B electric and gas companies and Class A telephone and water companies.

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.

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 Director of the appropriate division will carry out those responsibilities assigned to the Administrative Law Judge in paragraph (a)(2) of this section.

(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, a utility shall file a notice of intention to negotiate with the Secretary, 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, 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 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 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 promptly report 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 double-spaced, and the top, bottom and left-hand margins shall be at least one and one-half inches.

(iii) The name of the witness shall be at the top center of each page one inch from the edge, the case number, if already assigned, shall appear in the upper left corner of each page, and the page number for each page shall be 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. Pages shall be single-sided and numbered.

(c) (1) Except as otherwise provided in subdivision (d) of this section, a copy of written testimony and exhibits shall be filed with the Secretary and shall be served on the presiding officer and 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, parties shall consult directly with the Secretary as to the filing requirements. 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 the prepared written testimony and exhibits that will comprise its initial case in support of its rate filing and shall forward a copy to the New York State Consumer Protection Board. In addition, the utility company shall serve a copy of the testimony and exhibits on each party appearing in the proceeding who so requests.

(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 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 § 3.6 of this 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.

(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 filed with the Secretary, served on all parties and 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, set out in § 3.5 of this Title. In addition, any brief longer than 10 pages (exclusive of exhibits) shall include a table of contents.

§ 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 § 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) To the maximum extent possible, discovery requests and responses pursuant to this Part shall be served 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 presented on a separate page. Each party's interrogatories (and document requests pursuant to § 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. Provision of an electronic copy meeting the requirements of § 3.5(b) of these Rules satisfies this obligation. A copy of each document shall be provided to any presiding officer or party who so requests.

(c) If the party from whom 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 days following the issuance of the ruling or within 10 days following service of the request, whichever is later.

(e) If a requested document is voluminous and cannot be provided electronically, 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 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 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 § 6-1.4 of this Title.

(f) Requests for documents in the control of trial staff shall be subject to the provisions of this 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 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 requests should be referred.

(b) The determination of when service of discovery requests, objections, or responses is complete is governed by § 3.5(g)(2).

(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, at the request of any party or on his or her own motion, modify the procedures set forth in this 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:

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

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

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

Part 6 - Implementation of Provisions of the 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 offices of the Department of Public Service. Records will be made available to requesting persons in hard copy or electronically as appropriate.

(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. 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 to the Secretary and shall be heard by the Secretary.

§ 6-1.2 Fees

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 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 Department and requesting critical infrastructure status for information contained therein, shall submit the records to the Department Records Access Officer 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," "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 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 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 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 Department Records Access Officer shall ensure compliance and coordinate public requests for access to records as set forth in § 6-1.1 of this Part.

(2) The Records Access 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 office 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 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 Department determination.

(1) Until such time as the 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 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 Records Access Officer and the office director charged with custody of the document on the basis of the information, as well as 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 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 institute a proceeding to re-determine the classification of records granted confidential status.

(2) The 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 Department shall serve a written reply upon the person requesting access to the record, which either grants or denies access to the record. The Department reply shall state the reasons for the determination. The reply shall also be served upon the person who originally submitted the information, and the Committee on Open Government. Information copies are to be sent to the Department Records Access Officer and the office director having custody of such records, if not in the custody of the 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 within seven business days of receipt. The appeal is

taken when it is received by the Secretary who shall hear appeals from such negative determinations. The Secretary may consult with the General Counsel and the Chief Administrative Law Judge or their designees in reaching a determination. In addition, a copy of the appeal shall be served upon the opposing party and sent to the Department Records Access Officer.

(2) The 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 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 to the Department Records Access Officer.

§ 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 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 § 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 within seven business days of receipt of such determination. The Secretary shall hear appeals from such negative determinations. The Secretary may consult with the General Counsel and the Chief Administrative Law Judge or their designees in reaching a determination.

(2) The 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 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 to the Department Records Access Officer.

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 provide 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 Records Access 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; 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 available on the Commission's website.

(c) Upon receipt of a request from a data subject, which may be sent in electronic form, 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 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 § 6-1.2 of this Part), and responding to such request 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 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 or 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 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 or 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.

(b) Unless otherwise prescribed by statute, written copies of records will be furnished in accordance with § 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.

(b) whenever practicable, records shall be made available at the New York City Office of the Department.

(c) The Department shall accept requests for records and produce records during regular business hours.

§ 6-2.7 Requests for Records and Information

All requests made pursuant to this Part 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 (l) of subdivision one of § 96 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 § 6-2.9 of this Subpart may, within 30 days of such denial, appeal in writing to the Secretary.

(b) 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 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 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 (l) of subdivision one of § 96 of the Public Officers Law.

(e) The Department shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant

to this section upon receipt, the determination thereof and the reasons therefor at the time of such determination.

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.

A declaratory ruling may also be issued whenever the Commission determines it is warranted by the public interest.

§ 8.2 Procedure

(a) In addition to complying with the requirements of § 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 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 § 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.

§ 8.3 Effect

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

Part 17 - Matters Relative to All Applications

§ 17.1 Preparation and Filing of Petition

All applications for approval, consent, permission or certificate of authority shall be by petition duly verified. The petition and all accompanying documents shall be filed in accordance with the requirements of § 3.5.

§ 17.2 Attachment of Certificate of Incorporation

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 shall be filed with the petition. If a document has once been filed with the 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 Commission and shall set forth in detail that compliance has been had with such requirements.

§ 17.4 Correction of Deficiencies

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 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 the application.

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

§ 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 Commission by telephone of the making of such contract or agreement, and a copy thereof shall be filed 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.

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

§ 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 Commission by telephone of the making of such contract or agreement, and a copy thereof shall be filed 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.

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

§ 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 Commission by telephone of the making of such contract or agreement, and a copy thereof shall be filed 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.

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

§ 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 Commission by telephone of the making of such contract or

agreement, and a copy thereof shall be filed 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.

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

§ 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 Commission by telephone of the making of such contract or agreement, and a copy thereof shall be filed 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.