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§ 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 petition shall set forth the relevant economic, engineering, or environmental factors. The petition shall be reviewed by staff. Staff 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.

§ 100.2 Connection from existing electric facilities to residential subdivisions

(a) The connection from the existing electric distribution system to the underground distribution lines installed within the applicant's residential subdivision shall be made in accordance with the following requirements:

(1) a utility may, at its discretion and expense, install or provide for the installation of lengths of underground supply line in addition to that portion which is required to be provided without contribution to applicants pursuant to section 98.2 of this Title; and

(2) where any part of a supply line in excess of the footage requirements of section 98.2 of this Title is to be placed overhead, an applicant must submit a written application to the utility at least 75 days prior to the projected commence-

ment of the construction of the supply line, and the utility must report such projected construction to the Commission no later than 45 days before such construction is commenced, the Commission reserving the right to require the underground installation of particular lines, on the basis of the relevant economic, engineering, or environmental factors.

(b) In the event a utility either intends, at its own discretion, or is required pursuant to this Part, to place underground connecting supply lines between an existing electric system and the underground distribution lines installed within an applicant's residential subdivision, it shall inform the telephone company and cable television company serving the area in which the residential subdivision is located. If a new common access route from the existing electric system to the residential subdivision will be used, the connecting supply lines of the utility and the telephone company and cable television company shall be placed underground.

§ 100.3 Deposits by applicants

(a) In order to guarantee performance, a utility may require from a nonresiding applicant before construction is commenced a deposit equal to the estimated cost of construction. This deposit is in addition to the applicant's payment of its share of costs for installation and such deposit shall be returned to the applicant with interest, at the rate specified by the Commission for interest on deposits, on a pro rata basis as each new customer is connected with service from the utility.

(b) Any portion of the deposit remaining unrefunded five years after the date the utility is first ready to render service from the underground electric distribution lines shall be retained by the utility and credited to the appropriate plant accounts.

(c) Upon the mutual agreement of both a utility and an applicant, a bond may be posted in lieu of any deposit.

§ 100.4 Cooperation by applicants

(a) Each applicant shall cooperate with the utility providing service in an effort to keep the cost of the construction and installation of underground electric distribution lines, service lines and appurtenant facilities as low as possible, consistent with requirements for safe and adequate service, including reasonable provision for load growth and requirements of Part 101 of this Title.

(b) The utility may require that all sewers, water facilities, drainage facilities, and curbs be installed before it commences construction within a residential subdivision.

§ 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 petition 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 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 secretary of the Commission grant an exception. Three copies of the request shall be sent by certified mail to the secretary. 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 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 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.