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#### § 233.1 Definitions

(a) Dwelling. A building designed or used as the living unit for one or more families. For the purposes of this standard, mobile homes shall not be considered dwellings.

(b) Historical building. Any building or structure designated historically significant by the State or local governing body, or listed (or determined by the Secretary of the Interior to be eligible to be listed) in The National Register of Historic Places.

#### § 233.2 Applicability and compliance

(a) All new dwellings in the State of New York for which an application for a building permit was made and plans were filed on or after January 1, 1979, and all new dwellings within the State for which construction was begun on or after January 1, 1979, will not be eligible for gas and electric service unless these dwellings comply with the New York State Energy Conservation Construction Code. Compliance with this code will be satisfied under any of the following circumstances:

(1) a building permit is obtained for the dwelling from a building code authority or similar authority empowered by local law to issue building permits;

(2) an affirmation is given by the contractor or builder on a certificate of compliance (see Appendix B-1 of this Title) that the construction of the dwelling will comply with the Energy Conservation Construction Code within 30 days after occupancy; or

(3) a modification or variance from the requirements of the Energy Conservation Construction Code is issued by the State Board of Review as constituted pursuant to the Executive Law.

(b) For any dwelling constructed after April 1, 1977 but before January 1, 1979, gas and electric service will not be provided without compliance with the minimum insulation standards promulgated by the commission in Opinion 77-10 (Case 26286), as amended (as described in section 10.3 of this Title).

#### § 233.3 Waivers

For any dwelling subject to the requirements of section 233.2(b) of this Part, a waiver from these requirements may be granted by:

(a) the utility, when the overall heat loss for the building envelope does not exceed the total heat loss which would result from conformance to the individual requirements. The heat loss calculations shall be certified by a licensed engineer or architect;

(b) the utility, if the applicant for service can establish through two estimates, one of which may be a utility audit, that the purchase price and installation charge (excluding financing charges) will be greater than seven times the anticipated annual savings to be obtained, based on the present cost of the fuel currently used in the dwelling;

(c) the Public Service Commission for just cause, in unusual circumstances, if the applicant for gas or electric utility service has been denied a waiver pursuant to subdivision (a) or (b) of this section.

A copy of each variance granted or denied by the utility shall be made available to the commission, and each applicant denied a variance shall be promptly informed by the utility of the right to appeal to the commission.

#### § 233.4 Certificate of compliance

(a) A certificate of compliance (see Appendix B-1 of this Title), shall be used in all areas of the State where no local authority exists, to assure compliance with the insulation requirements of the Energy Conservation Construction Code.

(b) Each certificate of compliance shall be signed by the builder or contractor, and the owner shall receive a copy of such certificate.

#### § 233.5 Compliance procedures

(a) In areas where there is no local building code authority, upon a complaint by a dwelling owner or tenant concerning noncompliance with the provisions of section 233.2 of this Part, the utility will perform an onsite inspection to determine conformance with the standards concerning roofs, walls, foundation walls, floors, windows and doors. The result of this inspection will be provided in writing to the owner (and tenant when applicable) of the building.

(b) Whenever the utility finds, as a result of such inspection or notification by the local building code authority, more than one outstanding complaint against any particular contractor, wherein a dwelling constructed by such contractor or builder was found to be in noncompliance with the applicable standards, the utility shall refuse to provide gas or electric service to any construction site of that contractor or builder until all existing violations are corrected. The utility shall undertake random inspections of the future construction work of a past noncomplying contractor or builder until such time as the utility is satisfied that the applicable standards are being met.

#### § 233.6 Penalties for noncompliance

(a) In the event the utility finds that any dwelling fails to comply with subdivision (a) or (b) of section 233.2 of this Part, the utility shall impose a 25-percent surcharge on any bill for electric or gas service to the customer until such violations are corrected.

(b) The effective date of the surcharge rate shall be:

- (1) immediately after notice, in the event the owner is directly responsible for the noncompliance; or
- (2) ninety days after notice, in the event the owner has not contributed to the deficiencies. No surcharge shall be applied if the owner brings the building into compliance within 90 days.

(c) In the event the owner is not billed for the provision of utility service, no surcharges will be applied to the bills of the nonowner occupants of the dwelling. Instead, after notification to the owner that the building is not in compliance, a surcharge will be billed to the owner. The surcharge will be 25 percent of the utility bills for the dwelling that is not in compliance.

(d) In the event that circumstances prevent collecting the surcharge amount from the owner of the noncomplying building, the utility may refuse future connections for service to new tenants in the dwelling until it is brought into compliance.

(e) Furthermore, if the owner is an occupant of the dwelling but is not billed for any gas or electric utility service, the surcharge will be imposed on the bill for service to the unit occupied by the owner.

#### § 233.7 Applicability and conditions

An existing dwelling will not be supplied gas or electric service for the purpose of converting to gas or electric space heat unless:

- (a) the roof/ceiling has at least six inches of insulation or insulation with an R value of 19 or greater;

- (b) the dwelling has storm windows, or thermal windows with multiple glazing; and
- (c) the entrances have storm doors or thermal doors.

#### § 233.8 Waivers

(a) The utility may waive the requirements in section 233.7 of this Part where:

(1) the applicant for service can establish through two estimates, one of which may be a utility audit, that the purchase price and installation charge (excluding interest charges) will be greater than seven times the anticipated annual savings to be obtained (based on the present cost of the fuel currently used in the building);

(2) the dwelling is an historical building; or

(3) other measures have been taken so that the overall heat loss for the building envelope does not exceed the total heat loss which would result from conformance with the minimum requirements of section 233.7 of this Part. Such a heat loss calculation must be certified by a licensed architect or engineer.

(b) In the case of a dwelling having a flat roof, or having four or more stories and converting to gas service in a temperature-controlled service classification, compliance with the roof insulation standard will not be required if four or more inches of insulation are already in place or if insulation can be installed only by means of cutting an opening in the roof.

(c) In the case of a dwelling having six or more stories, storm windows will not be required as long as the utility certifies that the dwelling's windows are caulked and weatherstripped. This certification shall be made in writing to the commission. A storm window will not be required on any window opening onto a fire escape.

(d) Copies of waivers granted or denied by a utility shall be made available to the commission. Applicants denied waivers shall be informed of their right to appeal that denial to the commission.

(e) The commission may grant a waiver of the requirements of section 233.7 of this Part for just cause after an applicant for gas or electric service has been denied a waiver by the utility.

#### § 233.9 Certificate of compliance

(a) A dwelling's compliance with section 233.7 of this Part shall be certified either by (1) the owner, (2) a contractor of the owner's choice who has inspected the building, or (3) a utility representative who has inspected the building at the owner's request. (See Appendix B-2 of this Title.)

(b) The utility will provide the certificate of compliance to the applicant at the time of application for service, so that the applicant will be apprised of the requirements for service and the methods by which compliance can be certified.

#### § 233.10 Penalties for noncompliance

(a) The utility shall impose a 25-percent surcharge on any bill for electric or gas service to any dwelling which has been converted to gas heat, or any dwelling which has converted to electric space heat and which does not comply with the standards set forth in section 233.7 of this Part.

(b) The effective date of the surcharge rate shall be:

(1) immediately after notice, in the event the owner is directly responsible for the noncompliance; or

(2) ninety days after notice, in the event the owner has not contributed to the deficiencies. No surcharge shall be applied if the owner brings the building into compliance within 90 days.

(c) In the event the owner is not billed for the provision of utility service, no surcharges will be applied to the bills of the nonowner occupants of the dwelling. Instead, after notification to the owner that the building is not in com-

pliance, a surcharge will be billed to the owner. The surcharge will be 25 percent of the utility bills for the dwelling that is not in compliance.

(d) In the event that circumstances prevent collecting the surcharge amount from the owner of the noncomplying building, the utility may refuse future connections for service to new tenants in the dwelling until it is brought into compliance.

(e) Furthermore, if the owner is an occupant of the dwelling but is not billed for any gas or electric utility service, the surcharge will be imposed on the bill for service to the unit occupied by the owner.