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§ 604.1 Definitions

Unless the context otherwise requires, as used in this Part and Part 608 of this Title:

(a) The term distribution facility means the telephone cable, wire and associated hardware used to provide service to one or more customers;

(b) The term feeder facility means connecting cable, conduit or poles that are installed between a telephone switching station and distribution facilities outside, within or through a residential subdivision;

(c) The term underground telephone facilities means a system in which all cable, service wire, conduit and manholes are placed below ground, either direct buried or in conduit, as specified needs dictate, and may include:

(1)rear wall cable placed on row houses; and

(2)pedestal terminals necessary to facilitate installation, operation and subsequent maintenance of the underground distribution system.

(d)The term applicant means a developer, builder, person, partnership, association, corporation or governmental agency applying for construction of telephone facilities.

(e)The term residential building means a structure enclosed within exterior walls or fire walls which is built, erected and framed of component structural parts and is designed for permanent residential occupancy.

(f)The term multiple occupancy building means a structure (including row houses) enclosed within exterior walls or fire walls which is built, erected and framed of component structural parts and is designed to contain four or more individual dwelling units for permanent residential occupancy.

(g)The term residential subdivision means a tract of land divided into five or more lots for the construction of five or more new residential buildings or the land on which new multiple occupancy buildings are to be constructed, the development of either of which has been approved (or was required to be approved) by governmental authorities having jurisdiction over land use, which authorities include:

(1)the Department of State, pursuant to article 9-A of the Real Property Law;

(2)the Department of Environmental Conservation, pursuant to article 15, Titles 5, 15 and 27, article 17, Title 15 and article 24 of the Environmental Conservation Law;

(3)The Adirondack Park Agency, pursuant to *sections 809 and 810 of the Executive Law* and article 15, Title 27, and article 24 of the Environmental Conservation Law;

(4)any Department of Health, pursuant to article 11, Title 2 of the Public Health Law;

(5)counties, pursuant to *section 239-d(7) of the General Municipal Law*;

(6)cities, pursuant to *sections 32, 33 and 34 of the General City Law*;

(7)villages, pursuant to section 179-k, 179-l and 179-m of the Village Law; and

(8)towns, pursuant to *sections 276, 277 and 278 of the Town Law*.

(h) The term public R/W means the area within the territorial limits of any street, avenue, road or way that is for any highway purpose under the jurisdiction of the State of New York or the legislative body of any county, city, town or village, that is open to public use and that may be used for the placement of utility facilities.

(i) The term R/W (right-of-way) means a right to pass over, occupy or use another's land for placing and maintaining utility facilities.

(j)The term new construction means the installation of new telephone, distribution or feeder facilities on any R/W where no overhead telephone facilities previously existed.

(k)The term VSR means a visually significant resource:

(1)designated primarily or exclusively because of its exceptional, outstanding, significant, special or unique scenic quality, pursuant to State or Federal enabling legislation; and

(2)listed in section 608.2(h) of this Title.

(l)The term Commission means the Public Service Commission of New York State.

(m)The term utility means a telephone corporation subject to the jurisdiction of the Commission.

§ 604.2 Obligations of applicants and utilities

(a) Within an applicant's residential subdivision, each utility shall construct, own, operate and maintain underground distribution and feeder facilities along public R/W and on public land and private property across which a R/W satisfactory to such utility is obtained.

(b) Before construction may proceed, the applicant shall first have:

(1) either:

(i) delivered to the utility, free from cost, any necessary R/W agreements; or

(ii) paid in advance or agreed in writing to pay the utility any charge relating to the utility's acquisition of the necessary R/W agreements, so long as the applicant indicates to the utility in writing that the applicant has been unable to obtain such agreements;

(2) in the case of nonresiding applicants, cleared any R/W necessary for the provision of utility service, at no charge to the utility, of tree stumps, brush, and other obstructions and graded such R/W to within six inches of final grade where telephone facilities will be installed; or

(3) in the case of nonresiding applicants, provided a survey map certified to by a licensed professional engineer or land surveyor and certified to as final by the applicant, showing the location of each dwelling (if known), lot, sidewalk and roadway, if requested to do so by the utility;

(4) in the case of a nonresiding applicant, placed, and agreed to continue to maintain, survey stakes indicating grade and property lines; and

(5) in the case of a nonresiding applicant, furnished to the utility, or agreed to furnish, a map showing the location of all existing and proposed underground facilities as soon as the location of such facilities is known.

(c) In the case of a nonresiding applicant, the applicant shall maintain the required clearance and grading during construction by the utilities.

§ 604.3 New construction of underground facilities in residential subdivisions

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

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

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

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

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

(4) an applicant requests undergrounding.

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

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

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

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

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

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

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

(3) either:

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

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

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

> Note: The term final approval refers to authorization of a residential subdivision by governmental authorities having jurisdiction. A residential subdivision is finally approved when all necessary governmental consents have been obtained to allow the developer of the subdivision to sell lots and/or build residences. If a subdivision needs only be approved by a county health department the final approval of that agency, in accordance with its regulations, when received is final. If the town plan-

ning board must give its consent as well, final approval is not obtained until the board and the health department have completed their processes of authorization. A section of a subdivision is the smallest unit of a subdivision given final governmental approval. If, for example, the developer of a subdivision submits a preliminary plan covering 100 lots but initially only 50 are finally approved, the 50 lot portion is a section of the subdivision. If the subdivision contains sections, the percentage of lot sales required by condition (3) must be met by every section of the subdivision and not just the section in which the distribution facilities are to be installed.

Notwithstanding the foregoing provisions, if the necessary facilities are proposed to be in a VSR, the procedures set forth in section 608.2(b)-(e) of this Title shall apply.

(g) If a utility receives an application for service within a residential subdivision which is governed by the provisions of subdivision (b) of this section and the per-foot cost of installing the necessary distribution or feeder facilities will be greater than two times the cost per foot of installing overhead distribution or feeder facilities, the utility or applicant may petition the Secretary of the Commission to allow overhead installation, which petition shall set forth the relevant economic, engineering and 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 608.2(b) through (e) of this Title shall apply. If the residential subdivision is located within the Adirondack Park, the utility shall send a copy of the petition to the Adirondack Park Agency.

§ 604.4 Connection from existing telephone facilities to residential subdivisions

(a) The connection from a telephone switching station to the underground distribution or feeder facility installed within an applicant's residential subdivision shall be made in accordance with the following requirements:

(1) the utility shall install underground without contribution from the applicant an amount of feeder facilities from the boundary line of the residential subdivision equal to 25 feet per dwelling unit or 200 feet, whichever is greater, except as may be required under subdivision (3) of this section; in no event will the utility be required to provide more than 500 feet without contribution by the applicant;

(2) the utility may, at its discretion and expense, install underground additional portions of connecting feeder facilities; and

(3) where any part of a feeder facility in excess of that required by section 604.4(a) (1) of this Part is to be placed overhead, the applicant must submit a written application to the utility at least 75 days prior to the projected commencement of construction of the feeder facility 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 facilities on the basis of the relevant economic, engineering or environmental factors.

(b) In the event a utility intends at its own discretion or is required pursuant to this section to place underground feeder facilities to an applicant's residential subdivision, it shall inform the electric company and cable television company serving the area in which the subdivision is located. If a new common access route from existing systems to the subdivision will be used, the connecting facilities of the utility, the electric company and cable television company shall be placed underground.

§ 604.5 Deposits by applicants

(a) In order to guarantee performance, a utility may require from an 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 on a pro rata basis as each new customer is connected with service from the utility at the rate specified by the Commission for interest on deposits.

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

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

§ 604.6 Cooperation by applicants

(a) Each applicant shall cooperate with the utility providing service in an effort to keep the cost of construction and installation of underground telephone distribution facilities as low as possible, consistent with requirements for safe and adequate service, including reasonable provision for load growth and requirements of Part 607 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.

§ 604.7 Joint activities

To the extent practicable, underground, electric, communication, gas, and cable facilities shall be installed in a common trench when new construction is, or can without undue difficulty, be made simultaneously. Every reasonable effort shall be made to use joint occupancy utility poles to accommodate electric, communication and cable television facilities when new overhead construction occurs.

§ 604.8 Reports

Each utility shall provide the following information as part of its annual report to the Commission:

(a) the length of trench in new residential subdivisions shared with others;

(b) the utility's average cost per foot of such shared trench;

(c) the length of trench in new residential subdivisions not shared with others;

(d) the utility's average cost per foot of such nonshared trench;

(e) the total length of distribution and feeder facilities placed underground outside residential subdivisions (in cable sheath feet);

(f) the utility's average cost per foot of such distribution and feeder facilities placed underground;

(g) the total length of distribution and feeder facilities placed above ground outside residential subdivisions (in cable sheath feet); and

(h) the utility's average cost per foot of such distribution and feeder facilities placed aboveground.

§ 604.9 Special conditions

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

(b) In unusual circumstances when the application of this Part appears impracticable or unjust to either party or discriminatory to other customers, the utility providing service or the applicant may 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 or feeder facilities within a residential subdivision would be less environmentally desirable than the new construction of overhead facilities, the utility or applicant may request that the 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 subdivision and any economic, engineering, or other factors considered pertinent to the case;

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

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

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

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

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

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

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

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

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

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

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

§ 604.10 Information on line extension costs

Each utility shall prepare an information sheet describing line extension procedures and costs, to be given to persons inquiring about line extensions.