

CHAPTER VI: Telephone and Telegraph Corporations
Subchapter A: Service

Part 604 - New Construction of Distribution Facilities in
Residential Subdivisions

§ 604.3 New construction of underground facilities in residential subdivisions

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

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

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

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

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

(4) an applicant requests undergrounding.

Note: The number of dwelling units is the criterion to be used to determine whether installation is required to be underground. In order to ascertain the number of dwelling units, it is necessary to consult the approved subdivision map to determine how many dwelling units are planned. Each lot shown on the map should, in the case of a single family dwelling, be considered to contain one dwelling unit unless there is sufficient contrary evidence to render it unlikely that each lot will contain a separate dwelling unit (e.g., a foundation is constructed occupying two lots). The

measurement of trench footage should be the shortest distance required to serve the homes within the subdivision, consistent with the utility's obligation to provide safe and adequate service.

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

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

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

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

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

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

(3) either:

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

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

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

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

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

§ 604.9 Special conditions

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

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

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

accordance with the requirements of § 3.5 of this Title. The request shall:

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

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

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

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

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

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

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

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

¹[* 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

(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].

construction. This will usually be the street within the residential subdivision.