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§ 608.1 Applicability

(a) The requirement of section 608.2(a) of this Part applies to the new construction of distribution and feeder facilities (other than pursuant to either the provisions of Part 604 of this Title that require underground construction or to the requirement of any other governmental authority having jurisdiction to require underground construction) on public and private land in VSRs where an agency referred to in subdivision 608.2(h) of this Part:

(1) has no statutory authority to require the underground construction of the particular distribution or feeder facility; and

(2) has supplied to the affected utility(ies) and to the Commission a map of the particular VSR (at a scale appropriate to such VSR) showing its boundaries in sufficient detail to permit the utility to comply with the requirements of this Part.

(b) Notwithstanding the provisions of this Part, where any electric company has been permitted to install an overhead distribution or service line necessary to furnish permanent electric service in a particular VSR in accordance with the procedures set forth in section 99.2 of this Title, a utility may install a distribution or feeder facility necessary to furnish permanent telephone service overhead using the poles which were used for the electric line.

(c) This Part shall remain in full force and effect for a period of five years after its effective date.

§ 608.2 Procedures and requirements

(a) Each utility shall allocate annually to its own VSR undergrounding fund an amount equal to the greater of:

(1) the average of its annual expenditures on the underground installation of new underground distribution and feeder facilities within residential subdivisions for the years 1985, 1986 and 1987; or

(2) 0.14% of its 1987 local service revenues.

The amount to be allocated to the fund shall be adjusted for inflation each year according to the Handy-Whitman Index. The amount in the fund is the utility's maximum obligation in a given year. Each utility shall install or provide for the installation of new underground distribution and feeder facilities under this Part unless it has expended its maximum obligation in a given year. Each utility shall spend up to such maximum obligation on its share of the cost of installing such facilities underground that exceeds what an applicant for a line extension would have paid for facilities had the area not been designated as a VSR. If a utility spends in excess of its maximum obligation in a particular year, the excess shall reduce its maximum obligation of the following year by the amount of such excess. After a utility spends its maximum obligation in a particular year, additional VSR undergrounding is not required. If a utility does not spend its maximum obligation in a given year, any unspent portion shall be carried over to the next year.

(b) In addition to other procedures which may apply in connection with the proposed construction of a particular distribution or feeder facility:

(1) If a utility has not expended its maximum obligation as described in subdivision (a) of this section in a particular year when it chooses to propose, or receives a written application for service to a premises which necessitates the new construction of distribution or feeder facilities on any public or private land in a VSR, the utility shall provide a written report to the agency which designated or administers the VSR and any agency having jurisdiction over affected public land and the Commission of its intention to install the necessary distribution or feeder facilities underground or overhead (including a project description and consideration of the factors set forth in subdivision (j) of this section), at least 60 days before construction is planned to commence.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, a utility may provide the written report described therein within 30 days after the commencement of construction if the necessary distribution or feeder facilities are installed overhead on a temporary basis, pending the review of the utility's report if the visual impact of the temporary service is mitigated, to the extent appropriate, after the procedures of this section are followed.

(3) Notwithstanding the provisions of paragraph (1) of this subdivision, a utility may install permanent overhead facilities if the utility, before installation:

- (i) determines that the situation is an emergency; and
- (ii) obtains the written approval of the appropriate agency(ies); and
- (iii) upon written request, obtains the written approval of the Secretary of the Commission.

(4) If undergrounding is otherwise required in a VSR, and if the per-foot cost of installing the necessary facilities will be greater than two times the charge per foot set forth in the utility's tariff, the utility or the applicant may petition the Secretary of the Commission to allow overhead installation.

Approvals shall be granted or denied based on economic, engineering, environmental, emergency or hardship conditions.

(c) Unless the agency(ies) described in subdivision (b) of this section provide(s) written notification in-hand to both the utility and the Commission objecting to the utility's proposal within 30 days after receipt of the utility's report, the utility may install the facilities in question as contemplated in its report. The utility may also proceed as contemplated in its report within such 30-day period if the agency(ies) provide(s) written notification to both the utility and the Commission concurring with the utility's proposal.

(d) If the agency(ies) described in subdivision (b) of this section provide(s) written notification in-hand to both the utility and the Commission objecting to the utility's proposal (including a detailed explanation of such objection) within 30 days after receipt of the utility's report, the Commission shall review the report and notification(s) filed by the utility and agency(ies).

(e) Unless the Commission serves on the utility an order requiring the installation of the facilities in question to be performed in a different manner than that contemplated by the utility within 30 days after the Commission's receipt of the agency's notification pursuant to subdivision (d) of this section, the utility may install such facilities as contemplated in its report. The utility may also proceed as contemplated in its report within such 30-day period if the Commission serves on it an order concurring with the utility's proposal.

(f) If an agency referred to in subdivision (h) of this section intends to supply a map(s) of a VSR(s) listed in such subdivision to the affected utility(ies) and the Commission, such agency shall consult with such utility(ies) and the Commission staff as to the appropriate scale(s) and other details of such map(s).

(g) If an agency referred to in subdivision (h) of this section has a VSR map prepared before the effective date of these regulations, such map may be filed with the Commission and utilities without consultation if the map otherwise complies with section 608.1(a) (2) of this Title.

(h) A VSR is:

(1) one of the following resources which is designated as having high scenic quality:

(i) scenic areas of statewide significance (in coastal areas) designated by the Secretary of State pursuant to article 42 of the Executive Law;

(ii) Adirondack Park scenic vistas, designated by the Adirondack Park Agency, identified on the Private Land Use and Development Plan Map and listed in the State Land Master Plan for the Adirondack Park pursuant to article 27 of the Executive Law;

(iii) scenic roads, designated by the Commissioner of Environmental Conservation pursuant to article 49 of the Environmental Conservation Law;

(iv) scenic districts, designated by the Commissioner of Environmental Conservation pursuant to article 49 of the Environmental Conservation Law;

(v) State and national wild and scenic river areas administered respectively by either the Department of Environmental Conservation or the Adirondack Park Agency pursuant to article 15 of the Environmental Conservation Law, and by the Department of the Interior, pursuant to *16 U.S.C. section 1271*; and

(vi) Areas of Exceptional Scenic Beauty, acquired pursuant to the 1986 Environmental Quality Bond Act and administered by the Department of Environmental Conservation.

(2) any area in one of the following resources which is determined to have high scenic quality by the agency with jurisdiction over the affected resource as long as such determination is filed with the Commission:

(i) State Nature and Historic Preserve areas designated by the Legislature.

(ii) State parks, which were so designated for their scenic quality by the Legislature, the Department of Environmental Conservation or the Office of Parks, Recreation and Historic Preservation, including the Adirondack and Catskill Parks.

(iii) Lake George Park, except incorporated villages, administered by the Lake George Park Commission, pursuant to article 43 of the Environmental Conservation Law.

(iv) Parks within New York State administered by the Palisades Interstate Park Commission pursuant to article 9 of the Parks, Recreation and Historic Preservation Law.

(v) State historic sites owned by the Office of Parks, Recreation and Historic Preservation under article 19 of the Parks, Recreation and Historic Preservation Law and Title 9 *NYCRR Part 384*.

(vi) national historic sites, national seashores and national recreation areas located in New York State and operated by the National Park Service.

(i) The listing of VSRs in subdivision (h) of this section constitutes a determination that the new construction of distribution or feeder facilities underground is generally more appropriate therein than elsewhere. Neither such listing nor any agency's provision of a map of a given VSR to the affected utility and the Commission, however, creates a presumption that construction of particular distribution or feeder facilities underground is appropriate. The propriety of such construction will, instead, be determined in accordance with the procedures set forth in subdivisions (b)-(e) of this section.

(j) In evaluating the utility's proposal pursuant to subdivision (e) of this section, the Commission will consider such factors as:

(1) the nature of the visual setting in the vicinity of the proposed construction, including the character of existing or proposed adjacent structures or land areas, unless a governmental authority with jurisdiction has plans to improve the scenic quality of the area in question;

(2) the probable environmental effects associated with both overhead and underground construction;

(3) any expected engineering difficulties associated with both overhead and underground construction; and

(4) the estimated cost associated with both overhead and underground construction.

(k) In the event a utility either intends at its own discretion or is required pursuant to this section to place a distribution facility underground, it shall inform the electric company and cable television company serving the area in which the underground construction is to be located. If a new common access route from existing facilities to the location of such underground construction will be used, the portions of the connecting facilities of the utility and the electric company that are located in a VSR shall be placed underground.

(l) Any delays caused by a utility's compliance with this Part shall be omitted from the counts of service standards measurements in section 603.12(d) of this Title.

(m) To the extent practicable, underground electric, communication, gas and cable television 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.

(n) Any interested agency or person may petition the Commission to add additional categories to the VSR list of subdivision (h) of this section. The Commission will approve or disapprove addition of the proposed category based on whether the category fits within the VSR definition in section 604.1(k) (1) of this Title.

(o) The VSR program shall be evaluated by the Commission after the program has been in effect for two years. Utilities shall submit to the Department within six months after the program has been in effect for two years, details of their experience with the program including: all locations of line extension construction in VSRs, the total length of all facilities undergrounded in VSRs, costs incurred by the utility, costs incurred by applicants for their share of line extension costs, problems encountered with the program, suggestions for changes to the program, or any other information the utility deems relevant to evaluation of the VSR program. The Department staff and/or the Commission may request, and the utilities shall provide, any information the Commission or staff deem relevant to evaluation of the VSR program.

§ 608.3 Reports

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

- (a) the total length of distribution and feeder facilities placed underground in VSRs (in cable sheath feet);
- (b) the utility's average cost per foot of such distribution and feeder facilities placed underground;
- (c) the total length of distribution and feeder facilities placed aboveground in VSRs (in cable sheath feet);
- (d) the subject utility's average cost per foot of such distribution and feeder facilities placed aboveground;
- (e) the total length of distribution and feeder facilities placed underground outside VSRs (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 aboveground outside VSRs (in cable sheath feet);
- (h) the utility's average cost per foot of such distribution and feeder facilities placed aboveground; and
- (i) an indication of how much the subject utility spent of its maximum obligation described in section 608.2(a) of this Part.