

Part 3 - Procedures Applicable to All Proceedings

§ 3.1 Applications to other authorities

Any person submitting an application that is subject also to the jurisdiction of a federal agency, a regulatory agency of another state, or another New York state agency shall state in the application whether a corresponding application has been submitted to that other agency (or when it will be submitted) and what action, if any, has been taken on it.

§ 3.2 Service and effectiveness of Commission documents

(a) (1) Every order of the Commission will be filed in the principal office of the Commission and served upon all parties to the proceeding in which it is issued, any other person requesting inclusion on the service list for such proceeding, and any person to whom, or corporation to which, the order issues a directive or prohibition (who or which shall be deemed to be a person or corporation to be affected by such order within the meaning of §23(1) of the Public Service Law). A certified copy or a copy bearing the seal of the Commission will be provided [to any party requesting one] upon request.

(2) [Orders and other papers will be served by the Commission personally, by mail, or by overnight delivery service. If an order is served by mail or overnight delivery service, service will be deemed made at the time of sending.] Unless a statute, order, notice or ruling provides otherwise, such order, notice or ruling is effective upon issuance, which occurs when it is posted on the Commission's website.

(3) When a party appears by a representative, service on the representative will be deemed proper service on the party.

(b) [Unless otherwise stated in the order, an order shall be effective upon issuance.] (1) To the extent required by statute, every order of the Commission will be served personally or by mail on each party to the proceeding in which it is issued and any person to whom the order issues a directive or prohibition, unless such party (or a representative by whom the party appears, such as an attorney or corporate officer) or person consents in writing to electronic service. Such written consent shall:

(i) be filed with the Secretary in writing;
(ii) state that the consenting person is
authorized to do so;
(iii) state that the consenting person or
party has knowingly waived the right specified in §23(1) of the
Public Service Law to be served personally or by mail; and
(iv) specify any other terms of the consent
which, unless otherwise specified, will continue in force until
revoked.

(2) Commission documents other than orders will be
served personally, by mail, by electronic service or by
overnight delivery service.

(3) Electronic service is deemed complete upon
sending. Personal service is complete upon delivery. Service by
mail or by overnight delivery is deemed complete at the time of
sending.

[(c) Oral orders may be made in the circumstances and
manner specified in the Public Service Law and elsewhere in this
title.]

§ 3.3 Waivers

(a) (1) Any filing deadline, method of filing, number of
copies, or page limitation for any document [(as defined in
§3.5(a))] required or authorized to be [submitted to] filed with
the Commission (other than a document [submitted] filed in
response to a specific Commission order) may be modified by the
Secretary for the purpose of promoting the fair, orderly, and
efficient conduct of the case. The Secretary's decision with
respect to any such deadline or limitation shall be non-
reviewable.

(2) The Secretary shall follow reasonable procedures
in administering this subdivision, including the allowance of
oral requests and rulings subject to such notification
requirements as the Secretary may deem reasonable in the
circumstances.

(b) (1) Any request for an extension of time to comply
with any requirement, other than a request governed by the

preceding subdivision, may be granted by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case, except that the Secretary shall refer to the Commission any such request that would constitute a major modification of the requirement.

(2) A petition for waiver pursuant to this subdivision shall be in writing and shall be [submitted]filed in advance of the expiration of the time limit at issue. It shall describe in detail:

(i) the efforts made to comply on time with the requirement;

(ii) the circumstances alleged to have precluded timely compliance;

(iii) other factors warranting an extension of time; and

(iv) the amount of additional time being requested.

(c) Waivers not governed by subdivision (a) or (b) of this section may be granted only by the Commission. A petition for such a waiver shall be in writing and describe in detail the circumstances alleged to warrant the waiver.

(d) Requests for waivers pursuant to this section shall be on notice to all parties, except where the party requesting the waiver shows that time constraints or other circumstances preclude such notice.

(e) This section does not apply to requests for waiver of requirements imposed by a presiding officer in a proceeding or for waiver of the deadlines for responding to pleadings addressed to a presiding officer. Any such request shall be submitted to and ruled on by the presiding officer.

§ 3.4 Subpoenas

(a) Upon the application of any party to a proceeding, subpoenas and subpoenas duces tecum may be signed and issued by a Commissioner, by the presiding officer in the investigation or hearing in which the subpoena or subpoena duces tecum is requested, or by the Secretary. Normally, it is expected that

requests for subpoenas will be presented to the presiding officer where one has been assigned. A copy of any request for a subpoena duces tecum shall be served on the party alleged to possess the documents requested.

(b) A subpoena duces tecum will be issued only upon written application at least seven days in advance of the hearing, setting forth the [papers]documents desired to be produced and the reasons they are reasonably related to the subject of the proceeding.

(c) Whenever a subpoena is issued at the request of any party, the cost of service thereof and the fee of the witness shall be borne by the party at whose request the witness is summoned.

(d) Except as otherwise provided in this [t]Title, matters related to subpoenas and subpoenas duces tecum shall be governed by the provisions of the Civil Practice Law and Rules.

§ 3.5 [Pleadings, briefs, and other documents]Documents filed with the Secretary

(a) [As used in this section, the term "document" refers to pleadings, briefs, applications, petitions, complaints, and any other document offered for filing with the Commission. The requirements of this section shall apply to all documents except where other provisions of this title impose differing requirements on particular types of documents]Unless modified pursuant to §3.3(a)(1), the following requirements apply to all documents filed with the Secretary:

(1) Documents shall be filed electronically unless the filing party certifies that it is unable to do so, in which case a paper document may be filed, together with the required certification signed by the filing party or the party's representative.

(2) Any paper versions requested by the Secretary must be hand-delivered no later than the day after the electronic filing or, if sent by overnight delivery service or ordinary mail, must be processed by the delivery or postal service by midnight of the same day as the filing.

(3) When a party files only paper documents pursuant to subdivision (a)(1) of this section, the party must provide a

clear and permanently legible original to the Secretary, unless otherwise directed by the Secretary. The paper document must be received on or before the due date for the filing.

(b) [Pleadings and briefs shall be typewritten or printed on paper 8-1/2" by 11", with margins of no less than one inch on all four sides, and exhibits attached to them shall be folded to the same size. Pleadings and briefs shall be printed or typewritten in characters no smaller than 11-point or its equivalent, and shall be double-spaced, except that footnotes and lengthy quotations may be single-spaced. Reproduction may be by any process, provided all copies are clear and permanently legible. Any pleading longer than 40 pages shall be printed or typewritten on both sides of the page.]A document presented for filing shall:

(1) be formatted for a page size of 8-1/2" by 11", with margins of no less than one inch on all four sides. (Exhibits attached to paper filings shall be folded to the same size);

(2) be produced with a font size no smaller than 11-point or its equivalent, and be double-spaced, except that footnotes and lengthy quotations may be single-spaced;

(3) for paper documents, be printed on both sides of the page;

(4) include, on the first or cover page, the caption for the proceeding and case number, if any; the title of the document; the name, address, e-mail address and telephone number of the party submitting it or the party's representative; and, if requesting the initiation of a new proceeding, a space for the case number;

(5) identify the other parties on which it was served;
and

(6) be signed by or on behalf of, the submitting party. Electronic documents shall have electronic signatures as directed by the Secretary. Paper documents shall have a handwritten or printed signature. If the signature is by a representative of the party, the representative's title (if any) shall be provided.

[(c) A document presented for filing shall show, on the first or cover page, the caption for the proceeding and case

number, if any; the title of the document; and the name, address, and telephone number of the party submitting it or the party's representative. A document requesting the initiation of a new proceeding shall leave a space for the case number.]

[(d) A document presented for filing shall identify the other parties on which it was served.]

[(e) The original of any document presented for filing shall be signed in ink by or on behalf of each party. If the signature is by a representative of the party, the representative's title (if any) shall be provided. In any filing, a conformed copy may be substituted for the signed original as long as the signed original is submitted within five days thereafter.]

[(f) Unless otherwise required by law, regulation, or an order or notice issued in a particular proceeding, an original and five copies of each document shall be filed. A document filed in a proceeding to which there are other parties shall at the same time be served on each such party. A document requesting the institution of a new proceeding shall be served on any affected utility and on such other persons or entities as the Secretary may direct.]

[(g) (1) A document presented for filing will be deemed filed at the time the requisite number of copies are received at the Commission's Albany office unless the Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, authorizes other arrangements. A document submitted by telecopier machine shall not be considered to have been filed.]

[(2) A document served by one party on another will be deemed served at the time it is (i) delivered in-hand to the addressee or (ii) sent by United States mail, by overnight delivery service, or, in the circumstances and subject to the conditions described in the next paragraph, by telecopier machine. Where a reply must be submitted or other action taken within a specified number of days from the service of a document, that time shall be extended by five days if service was by mail and by one day if service was by overnight delivery service.]

[(3) Except as otherwise provided in this Title, parties in any proceeding may serve documents on each other by telecopier machine only if]

[(i) all active parties to the proceeding have consented to the use of telecopier machines for service on parties consenting to be so served, and]

[(ii) the party served has consented to be served by telecopier machine. Service by telecopier machine shall be deemed complete only when receipt is verbally acknowledged and a copy is sent via United States mail or overnight delivery service.]

[(4) Parties to any proceeding, who agree to be served by electronic means, may be served by electronic means. Service by electronic means is deemed complete when sent.]

(c) Additional requirements for electronically filed documents.

(1) Documents presented for filing electronically shall be:

(i) in a format that can be read using software that is readily available and is in widespread use by government, business and individuals; and

(ii) be electronically searchable unless the party providing the document certifies that it does not have the capability to produce a searchable file.

(2) Formats acceptable for the filing of documents will be identified from time to time by the Secretary.

(3) Additional guidance on electronically filed documents will be provided from time to time by the Secretary.

(d) A document presented for filing electronically will be deemed filed at the time it is received by the Secretary. A document presented for filing in paper form only will be deemed filed at the time it is received at the Commission's Albany office. The Secretary, for the purpose of promoting the fair, orderly, and efficient conduct of the case, may authorize other arrangements.

(e) Service of documents:

(1) A party who presents a document for filing in a proceeding in which there are other parties shall at the same time serve the document on each such party. A document requesting the institution of a new proceeding shall be served

on any affected utility and on such other person or entities as the Secretary may direct.

(2) When a document is served by a party on another party, service shall be by electronic means unless the serving and receiving parties agree otherwise, or the Secretary or presiding officer, upon a showing of good cause, authorizes the use of a different means of service.

(3) Electronic service is deemed complete upon sending. If service by other means is agreed upon or authorized pursuant to paragraph (2) of this subdivision, it will be deemed complete when delivered in-hand to the addressee or when sent by United States mail or overnight delivery service.

(f) When a reply must be submitted or other action taken within a specified number of days from the service of a document, that time shall be extended by five days if service was by mail and by one day if service was made electronically or by overnight delivery.

([h]g) Documents filed may be amended on notice to all parties on whom the original document was served. The Secretary or presiding officer may reject any amendment upon finding that its acceptance would be unfair to other parties.

([i]h) The requirements of this section may not be avoided by a party's use of a "letter in lieu of a brief" or similarly styled document; but this provision shall not preclude acceptance of letters and informal documents from the general public.

([j]i) A document requesting the Commission to adopt a rule [take any action requiring prior notice] pursuant to the State Administrative Procedure Act shall include a draft of [a] the required notice of proposed rulemaking in the form required by that statute and specified by the Department of State. If the filing party is requesting the Commission to take any action on an emergency basis pursuant to [section]§ 202(6) of the State Administrative Procedure Act, the document requesting such action shall include a proposed statement, in sufficient detail to satisfy the statute, of why emergency action is needed.

(j) All documents addressed to or submitted to a presiding officer which are required to be served on all parties to a proceeding, with the exception of discovery requests and responses, must also be filed with the Secretary.

§ 3.6 Motion practice

(a) All written motions shall, pursuant to § 3.5 of this Part, be [in writing, except that oral] filed with the Secretary and at the same time be served on each party to the proceeding. Oral motions may be made at hearings or in extraordinary circumstances where required by the public interest. Any oral motion not made at a hearing shall be on oral notice to all parties to the proceeding.

(b) In cases in which a presiding officer has been assigned and a recommended decision not yet been issued, motions shall be addressed to [and filed with] the presiding officer. In all other instances, motions shall be addressed to [and filed with] the Secretary.

(c) Motions shall clearly set forth the nature of the relief requested and the alleged basis for it.

(d) (1) Parties wishing to respond to motions shall do so within eight days after service [if service was made personally, within nine days after service if service was made]unless a different time period is permitted by [overnight delivery service]§ 3.5(f) of this Part[;] or [within 13 days after service if service was made by mail]is otherwise established by the presiding officer or the Secretary.

(2) The response shall be addressed to [and filed with] the official to whom the motion was addressed and, pursuant to § 3.5 of this Part, be filed with the Secretary and at the same time be served on each party to the proceeding.

(3) Replies to responses will not be entertained except in extraordinary circumstances or if the response itself seeks relief and effectively constitutes a counter-motion.

[(e) When a motion or response is addressed to the presiding officer, the original shall be filed with the presiding officer and five copies submitted to the Secretary. Where a motion or response is addressed to the Secretary, the original and 25 copies shall be filed with the Secretary.]

§ 3.7 Rehearings

(a) Any person interested in an order of the Commission may request rehearing within 30 days of service of the order. [An original and 25 copies of a]The petition for rehearing shall, [be submitted]pursuant to § 3.5 of this Part, be filed with the Secretary[,] and [a copy of the petition shall] at the same time be served on each party to the proceeding.

(b) Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

(c) Any party may respond to a petition for rehearing within 15 days of the date the petition was served on the responding party, but the Commission may deny a petition before that time has elapsed. [An original and 25 copies of any]Pursuant to § 3.5 of this Part, a response shall be filed with the Secretary, and [a copy of the response] at the same time [shall] be served on each party to the proceeding. Replies to responses will not be entertained except in extraordinary circumstances.

(d) The filing of a petition for rehearing does not in itself stay or excuse compliance with an order.

§ 3.8 Oral argument before the Commission

(a) The Commission may authorize oral argument before it in any proceeding on its own motion or at the request of a party. In general, oral argument before the Commission will be allowed only in unusual cases, where the issues are not adequately developed in testimony and written pleadings.

(b) A party requesting oral argument before the Commission may do so in any brief to the Commission or in a separate motion filed no later than the deadline for the final authorized round of briefs. Any such request shall include an explanation of why the party believes oral argument is warranted.

(c) The issues that may be raised on oral argument, and the parties authorized to argue, shall be determined by the Commission. The time allowed each party shall be determined by the Secretary.

(d) This section does not apply to oral argument before a presiding officer, which shall be allowed to the extent and in the manner permitted by the presiding officer in any proceeding.

§ 3.9 Settlement procedures

(a) Notification required for settlement discussions in pending proceedings involving large utilities.¹

(1) As soon as it appears, based upon exploratory discussion with another party or potential party, that settlement of an issue or issues in a pending proceeding is possible, the utility shall file, with the Secretary, a notice of impending negotiation. The notice shall contain the following:

(i) a general description of the issues that may be settled;

(ii) a list of the persons or parties to the negotiations; and

(iii) a certification by a duly authorized representative of the utility that all appropriate persons and parties have been or will be notified of the pendency of negotiations in a manner so as to permit a reasonable time for preparation.

(2) The Administrative Law Judge assigned to the case shall review the notice to ensure all persons who reasonably should have been notified of the pendency of the negotiations have been afforded a reasonable opportunity to participate. The Administrative Law Judge may take any action necessary to protect the rights of persons participating or desiring to participate in the negotiations or who reasonably should have been notified of the pendency of negotiations. The Administrative Law Judge shall report the results of the procedural review to the Commission.

(b) Notification required for settlement discussions in pending proceedings involving small utilities.² [(1)] The

¹ The term large utility as used in this section means Class A and B electric and gas companies and Class A telephone and water companies.

procedures for notification of impending negotiations in cases involving small utilities shall be the same as set forth in subdivision (a) of this section except, that if an Administrative Law Judge has not been assigned to the proceeding, [the notification should be filed with] the Director of the appropriate Division will carry out those responsibilities assigned to the Administrative Law Judge in paragraph (a)(2) of this section. [(viz.: Power, Gas, Communications or Water) instead of the Secretary.]

[(2) If an Administrative Law Judge has not been assigned to the proceeding, the Director will carry out those responsibilities assigned to the Administrative Law Judge in paragraph (a)(2) of this section.]

(c) Notification required for settlement discussions in anticipation of a formal proceeding.

(1) In the event the potential to settle issues between adverse entities arises outside the context of a formal proceeding or in anticipation of a formal filing, [large utilities] a utility shall file a notice of intention to negotiate with the Secretary [and small utilities with the Director of the appropriate operating Division (viz.: Power, Gas, Communications or Water)] and shall give notice to all persons who participated in either of the subject utility's two most recent proceedings of the same or similar type as that in which the settlement negotiations are proposed and to any other person reasonably known to have an interest in the outcome of negotiations and can reasonably be expected to engage actively in the negotiations. The notice shall contain the same information as required by paragraph (a)(1) of this section.

(2) The utility shall be responsible to determine the list of potential parties and, in the event of uncertainty, may seek guidance through the Secretary's Office.

(3) The responsibilities outlined in paragraph (a)(2) of this section shall be carried out by the Administrative Law Judge, if one is assigned, [and] or by the Director of the

² The term small utilities as used in this section means Class C and D electric and gas companies, Class B telephone companies and Class B, C and D water companies. Class E water companies which have less than \$100,000 in annual gross revenues, have been excluded from these regulations.

appropriate division, if an Administrative Law Judge is not assigned.

(d) Confidentiality of settlement discussions. No discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation session concerning a stipulation or settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties, their representatives and other persons attending settlement negotiations shall hold confidential such discussions, admissions, concessions, and offers to settle and shall not disclose them outside the negotiations except to their principals, who shall also be bound by the confidentiality requirement, without the consent of the parties participating in the negotiations. The Administrative Law Judge assigned to the case, or the Director of the appropriate division if no Administrative Law Judge has been assigned, may impose appropriate sanctions for the violation of this subdivision which may include exclusion from the settlement process.

(e) Confidentiality in mediations. The confidentiality provisions set forth in subdivision (d) of this section shall apply to a neutral and any agent or employee of the Department of Public Service participating in a mediated proceeding. A mediated proceeding is any process in which an alternative dispute resolution technique is used to resolve an issue in controversy, where a neutral may be appointed and specific parties participate. In particular, any oral or written communication prepared for the purpose of a mediated proceeding (mediation communication), shall not be required to be disclosed. A written agreement to enter into a mediated proceeding or reached as a final result of such proceeding, or any communication the parties agree is public information, is not a mediation communication.