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§ 99.1 Applicability

(a) The requirements of section 99.2(a) of this Part apply to the new construction of distribution lines, service lines and appurtenant facilities (other than pursuant to either the provisions of Part 100 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 section 99.2(h) of this section:

(1) has no statutory authority to require the underground construction of a particular distribution line, service line or appurtenant 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 telephone company has been permitted to install a distribution or feeder facility necessary to furnish permanent telephone service overhead in a particular VSR, in accordance with the procedures set forth in section 608.2 of this Title, a utility may install a distribution line, service line or appurtenant facilities necessary to furnish permanent electric service overhead using the poles which were used for the telephone facility.

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

§ 99.2 Procedures and requirements

(a) Each utility shall allocate annually to a 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 lines, service lines or appurtenant facilities within residential subdivisions for the years 1985, 1986 and 1987; or

(2) 0.14 percent of its 1987 sales to ultimate customers. 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 company's maximum obligation in a given year. Each utility shall install or provide for the installation of new underground distribution lines, service lines or appurtenant 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 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. Note: For example, for a 120-foot line of single phase service to a residential applicant in a VSR, with an overhead construction cost per foot of \$ 5 and underground construction cost per foot of \$ 20, the total cost of overhead construction would be \$ 600 and undergrounding \$ 2400. Overhead construction with a 500-foot allowance would cost the utility \$ 600 (\$ 5.00 per foot times 120 feet) and the applicant would pay nothing. If the utility had not spent its maximum obligation and undergrounding is appropriate, the utility would pay a total of \$ 2,400 from the VSR maximum obligation fund. The applicant would pay nothing. For a 700-foot line, under the same circumstances assuming the same costs, the total cost of overhead construction with a 500-foot allowance would cost the utility \$ 2500 (\$ 5.00 per foot times 500 feet) and the applicant would pay \$ 1,000 (\$ 5.00 per foot times 200 feet). If the utility had not spent its maximum obligation, and undergrounding was appropriate, the utility would pay a total of \$ 13,000 from the maximum obligation fund. The applicant would pay \$ 1,000. 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 in that year. 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 line, service line or appurtenant facilities:

(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 a distribution line, service line or appurtenant facilities on public or private land in a VSR, the utility shall provide a written report to the agency which designated or administers the VSR, any agency having jurisdiction over affected public land and the Commission, of its intention to install, or provide for the installation of, the necessary 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 line, service line or appurtenant 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;

(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 filed pursuant to section 98.6(b) (1) of this Title and as 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 considerations.

(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 or provide for the installation of 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 the 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 agencies' notification pursuant to subdivision (d) of this section, the utility may install or provide for the installation of 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 or maps 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's 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 99.1(a) (2) of this Part.

(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 Interior, pursuant to *16 U.S.C. §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 lines, service lines and appurtenant 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, shall create a presumption that construction of particular facilities underground is appropriate. The propriety of such construction shall, 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 costs 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 Part to place a distribution line, service line or appurtenant facilities underground, it shall inform the telephone 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, the telephone company and cable television company that are located in a VSR shall be placed underground.

(l) A utility shall install any necessary distribution line, service line or appurtenant facilities, with sufficient capacity and using suitable material which, in its judgment, will assure that an applicant receives safe and adequate service. Such installation shall be undertaken as soon as is reasonably possible after compliance with the procedures contained in this Part and shall be made at a time appropriate to render service. Construction shall not be delayed by the utility 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.

(m) 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 the addition of a proposed category based on whether the category fits within the VSR definition in section 98.1(l) (1) of this Title.

(n) 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 in the program or any other information the utility deems relevant to evaluation of the VSR program. The Department of Public Service 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.