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#### ARTICLE 4. SECURITIES

##### PART 37. ISSUANCE OF STOCKS, BONDS, NOTES OR OTHER EVIDENCES OF INDEBTEDNESS: GAS, ELECTRIC, STEAM, WATERWORKS, TELEGRAPH AND TELEPHONE CORPORATIONS

###### § 37.1 Contents of petition

The petition duly verified shall state or contain:

- (a) Financial condition of the applicant (see Part 3 of this Chapter).
- (b) The basis of the book cost of utility property of applicant and particularly whether it represents original cost of such property as original cost is defined in subdivision (f) of section 31.1 of this Subchapter, if it does not represent original cost, the basis should be fully stated.
- (c) Statement of whether such book cost includes any amount for a franchise, consent or right to operate as a public utility.
- (d) The amount and kind of stock which the corporation desires to issue, and, if preferred, the nature and extent of the preference.
- (e) The amount of bonds, notes and other evidences of indebtedness which the corporation desires to issue, date of maturity, the rate of interest, how secured, and if to be secured by a mortgage or pledge, the terms thereof.
- (f) The purposes for which the funds to be derived from the issuance of such securities are to be used, and particularly the amount for each of the following:
  - (1) acquisition of property;
  - (2) construction, completion, extension or improvement of facilities;
  - (3) improvement or maintenance of its service;
  - (4) discharge or refunding of its obligations; and
  - (5) reimbursement of moneys actually expended from income or from any other moneys in the treasury not obtained from the issuance of stocks, bonds, notes or other evidences of indebtedness.
- (g) The funds available from sources other than the proposed financing to meet in part the purposes stated in subdivision (f) of this section, including contributions from customers or others, salvage proceeds, depreciation reserve accruals and any unused balances in prior financing applications.
- (h) Copy of contract or agreement for the disposal of any of the stocks, bonds, notes or evidences of indebtedness which it is proposed to issue.
- (i) Statement in detail of the estimated costs and expenses of the contemplated financing.
- (j) Copy of proposed instrument if the bonds, notes or other evidences of indebtedness to be issued are to be secured by a mortgage, indenture, lease or other agreement not on file with the commission; and a certified copy shall be filed with the commissioner promptly upon execution.
- (k) Statement of the financial condition of each of the corporations to be merged or consolidated, if securities are to be issued by a corporation to be formed by the merger or consolidation of two or more corporations.

(l) Proof of the consent of the stockholders under the Stock Corporation Law and the Railroad Law if the application contemplates a mortgage.

(m) Statement as to whether required approval by other public authorities has been obtained.

(n) Whether any franchise or any right to own, operate or enjoy any franchise, or any contract for consolidation or lease is proposed to be capitalized directly or indirectly, except as the same is authorized by sections 69, 82, 89-f or 101 of the Public Service Law. If the proposal contemplates or involves the capitalization of any franchise, there shall be filed with the petition a verified copy of such franchises and an affidavit of the proper officer of the public authority granting same showing the amount that has been actually paid for such franchises and by whom such payment was made.

(o) An affidavit by the principal accounting officer of the petitioner that the accounts of the petitioner have been kept strictly in accordance with the accounting order or orders of the commission applicable thereto, and that since the effective date of such orders there have been no charges to asset accounts not in accordance therewith and that all required credits to such asset accounts have been made for the amount and in the manner prescribed therefor in such accounting orders.

### § 37.2 Specific provisions for acquisition of property

If securities are to be issued to acquire property (the petition duly verified shall state or contain):

(a) General description of the property to be acquired.

(b) Consideration to be paid for property and copy of purchase agreement.

(c) List of franchises, consents and rights to be acquired including the name of the grantor, date when granted, date of approval by this commission and number of case in which approval was granted and copy of said franchises, consents or rights duly certified by the proper official; consent to sale if any is required.

(d) Inventory of the property proposed to be acquired with the original cost of such property, original cost being as defined in subdivision (f) of section 31.1 of this Subchapter.

(e) In said inventory, the property shall be classified according to the requirements of the system of accounts prescribed by this commission applicable to the seller.

(f) An estimate of the accrued depreciation in the property together with a statement of the method or methods used in arriving at such estimate.

(g) The book cost, viz., amount at which said property is shown upon the balance sheet of the seller.

(h) The depreciation and amortization reserves applicable to said property, estimated if not ascertainable from books and records.

(i) A statement of contributions toward construction of said property, such contributions to be subdivided so as to show those subject to refund and those which are not.

(j) Statement of operating revenues, expenses and taxes for each of the three calendar years preceding the date of the petition relating to the property to be sold and balance sheet of the seller for the latest available date.

(k) At the hearing, the applicant shall be prepared to show by competent evidence the facts upon which it relies to establish that the transaction is in the public interest, that the property to be acquired is necessary to provide adequate service at reasonable rates and that the statements in the petition are true.

### § 37.3 Specific provisions for construction, completion or improvement of facilities

If securities are to be issued for the construction, completion or improvement of facilities (the petition duly verified shall state or contain):

(a) General description of the work proposed and the estimated cost thereof.

(b) Copy of construction or work agreement.

(c) Description and book cost in detail of all property which will be retired in connection with the proposed construction, with an estimate of the cost of removal and the salvage to be recovered.

(d) An affidavit by the chief accounting officer of the petitioner that no part of the cost of the work proposed is in whole or in part reasonably chargeable to operating expenses or to income, except as therein set forth.

(e) At the hearing, the applicant shall be prepared to show by competent evidence that the construction or equipment is required to render adequate service at reasonable cost and that the statements in the petition are true.

#### § 37.4 Specific provisions for improvement or maintenance of service

If securities are to be issued for the improvement or maintenance of its service (the petition duly verified shall state or contain):

(a) Statement in detail of the purposes of the proposed expenditure and the estimated cost thereof.

(b) Copy of construction or work agreement.

(c) Description and book cost in detail of all property which will be retired in connection with the proposed construction, with an estimate of the cost of removal and the salvage to be recovered.

(d) An affidavit by the chief accounting officer of the petitioner that no part of the cost of the work proposed is in whole or in part reasonably chargeable to operating expenses or to income, except as therein set forth.

(e) Detailed statement of the reasons why the proposed expenditures should be defrayed by the issuance of securities.

(f) At the hearing, the applicant shall be prepared to show by competent evidence that it is necessary to issue the securities for the purposes proposed, that the proposed expenditures are required to provide adequate service at reasonable rates and that the statements in the petition are true.

#### § 37.5 Specific provisions for refunding of obligations or retirement of securities

If securities are to be issued for refunding of obligations or the retirement of other securities (the petition duly verified shall state or contain):

(a) Description of obligations or securities to be refunded including par or face value thereof, interest or dividend rate, date of maturity, call premium to be paid, amount of money or other consideration actually received when refunded obligations or securities were issued, use made of said proceeds, unamortized costs of issue and unamortized premiums.

(b) Proposed disposition of unamortized costs and premiums.

(c) Unpaid interest or accrued dividends.

(d) At the hearing, applicant shall be prepared to show by competent evidence the facts upon which it relies to establish that the transaction is in the public interest and that the statements in the petition are true.

#### § 37.6 Specific provisions for reimbursement

If securities are to be issued for reimbursement (the petition duly verified shall state or contain):

(a) Balance sheets of the corporation at the beginning and end of the period covered by reimbursement proceeding.

(b) Balances in operating property account (or its equivalent) at the beginning and end of the period and by subaccounts.

(c) Original cost of property added to each subaccount of the operating property account (or its equivalent) for each of the years covered by the reimbursement proceeding.

(d) Credits to each subaccount for property retired in each year.

(e) Details of all other debits and credits to each of said subaccounts in each year.

(f) Analysis of retirements year by year to show book cost of each credit to operating property accounts, debit to depreciation reserve or other account, cost of removal and salvage.

(g) Analysis of credits to depreciation or retirement reserve to show the nature and source of each and basis of contra charges to expense or other account.

(h) Amount of fees in detail charged by affiliated interests, as such term is defined in the Public Service Law, which were included in the amounts required to be stated in subdivision (c) above.

(i) Funds available from other sources during the reimbursement period to meet the gross cost of additions to operating property account, including proceeds from salvage, contributions from customers and others and depreciation reserve accruals.

(j) Affidavit by petitioner's principal financial officer that proper credits to said subaccounts have been made for all property which was removed, sold, abandoned or destroyed or which for any cause ceased to be used and useful in the service of the public during the reimbursement period as required by the applicable system of accounts prescribed by this commission; that during the reimbursement period the debits to each of said subaccounts represent the original cost of the property used and useful in the service of the public; that the funds expended for purposes for which reimbursement is sought were not directly or indirectly derived from the sale of stocks, bonds, notes or other evidences of indebtedness or from open accounts of the petitioner.

(k) Purposes for which the funds to be obtained from the securities to be issued are to be used.

(l) At the hearing, applicant shall be prepared to show by competent evidence the facts upon which it relies to establish that the transaction is in the public interest and that the statements in the petition are true.

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#### § 37.7 Submission of proposed consideration

All data required by the above rules or considered necessary by the commission, except the consideration, for which said securities are to be issued or sold, must be submitted at least 20 days before final action by the commission thereon; and said consideration must be submitted before approval is given, together with an affidavit of the president of the applicant that the proposed issued is to be sold on the most advantageous terms obtainable.

#### § 37.8 Radio-telephone utilities and resellers of telephone service

Applications pursuant to section 101 of the Public Service Law by radio-telephone utilities and resellers of telephone services need contain only a description of the securities to be issued and the purposes for which the issuance is sought.