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§ 102.1 Definitions

The following words and terms when used in this Part, shall have the meaning indicated:

- (a) Utility. An "electric corporation" as defined in article 1 of the Public Service Law.
- (b) Commission. The Public Service Commission of New York State.
- (c) Transmission facilities. Items of electric plant not subject to the commission's jurisdiction under article VII of the Public Service Law used to convey electric energy at 65 kv or higher voltage for distances one mile or longer including: towers, poles and appurtenant fixtures; wire, cable and devices; conduit, tunnel, conductors and devices.
- (d) Subdivision. A tract of land divided into lots for residential buildings the plan for which has been approved by governmental authorities having jurisdiction.
- (e) Central business district. (1) The centrally located, prime commercial district of a municipality, the focus of main traffic arteries and mass transit composed of retail trade, offices (including governmental functions), light manufacturing and commercialized recreational activities with few or no dwellings.
(2) Normally, a town or village has only one central business district, but metropolitan districts may have more than one. Commercial areas essentially one lot deep along a thoroughfare are more aptly described as strip developments and not central business districts. Central business districts occupy a relatively small proportion of the urbanized area--not over four percent even in the smallest cities and only 0.4 percent in the largest.

§ 102.2 Applicability

(a)(1) After the effective date of this Part, any utility proposing to construct overhead transmission facilities as defined in this Part which are not subject to article VII of the Public Service Law shall promptly report the proposed construction to the commission, but in no event less than 60 days prior to the proposed commencement of construction. The report shall include a description of the proposed transmission facility, and a map of the areas as categorized in section 102.3 of this Part. With respect to such transmission lines that are intended to be built overhead through priority areas specified in section 102.3(a) of this Part, the report shall also include the information required by section 102.4 of this Part. In cases where construction of the proposed transmission facility has been approved by a governmental agency having jurisdiction the report shall indicate such approval and the basis thereof.

(2) No report is required under this subdivision for upgrading or rebuilding transmission facilities on existing right-of-way provided that all of the following conditions are met:

- (i) no additional rights-of-way are required;
- (ii) there is no increase in the number of structures on the right-of-way;
- (iii) the resulting structures do not carry more than two circuits;
- (iv) no substantial modification will be made to existing vegetative cover on the right-of-way; and
- (v) the height of a new tower does not exceed the height of a replaced tower by more than 10 feet.

(b) The commission after reviewing the utility's report or after appeal by an interested party may order a formal investigation if the commission finds that overhead construction of the proposed transmission facilities may not be in the public interest or may not be required for the performance of the utility's public service responsibilities with economy, efficiency and care for the public safety, the preservation of environmental values, and the conservation of natural re-

sources. In the absence of a response from the commission within the 60-day notice period, the utility may deem itself free to proceed with the construction.

(c) The commission shall, if it conducts a formal investigation, advise the utility promptly whether the proposed transmission facility may be placed overhead or whether all or a portion of the proposed construction should be placed underground together with its reasons for requiring underground construction.

§ 102.3 Classes of areas

(a) For transmission lines in the following areas, the analysis required by section 102.4 of this Part must be included in the report of proposed construction:

(1) National and State parks, preserves, reservations, landmarks, and monuments formally so designated and acquired for their natural, scenic or cultural value by appropriate State and Federal agencies. (Included would be historic landmarks, national landmarks, national monuments and trails, and wild and scenic rivers.)

(2) Historic sites formally so designated by National or State agencies but without acquisition of rights or ownership sufficient for the purpose of preservation.

(3) Central business districts in cities and villages.

(4) Developed and partly developed residential areas with an existing density of one or more dwelling units per acre, as shown on approved subdivision maps, occupying a minimum contiguous area of 20 acres, all or a portion of which would be traversed by the proposed transmission facility right-of-way.

(b) Other areas for which reports, but without the analysis required by section 102.4 of this Part, are required are:

(1) Areas of outstanding natural or scenic value which are preserved by non-profit private agencies but which have not been formally so designated by national or State agencies.

(2) Areas of outstanding cultural value (e.g., attractive pastoral scenes, locations of noteworthy architectural and/or social import both within and outside specific sites) that have been formally designated by the appropriate governmental authority.

(3) Existing local (city, town, village and county) parks and open space areas that have been formally established by governmental or private authorities.

(4) Public and semipublic facilities such as cemeteries, educational, correctional and medical facilities and military installations.

(5) Existing light industrial and commercial areas (e.g., industrial parks, shopping centers, office building complexes).

(6) Partially developed residential areas where the subdivision will have an eventual population density of one or more dwelling units per acre, as shown on approved subdivision maps, comprising a minimum contiguous area of 20 acres or a portion of which is traversed by the proposed transmission facility right-of-way.

(7) Areas of outstanding cultural value (e.g., attractive pastoral scenes, locations of noteworthy architectural and/or social import both within and outside specific sites that lend attractiveness to a neighborhood or community) that have not been formally designated by governmental or private authority.

(8) Residential areas with less population density than those specified in preceding categories.

(9) Planned and zoned undeveloped light industrial, commercial and residential areas.

(10) Managed woodlands (e.g., commercial and other productive forests).

(11) Agricultural districts established in accordance with article 25-AA of the Agriculture and Markets Law, and other farmlands.

(12) Existing and planned heavy industrial areas.

(13) Woods and open lands other than those included within areas specified in any priority area above.

§ 102.4 Advantage-disadvantage analysis

(a)(1) The advantage-disadvantage analysis required by this section is designed to provide a framework by which the features or facts which support one or another mode of construction can be identified clearly. Particular circumstances which reduce or enhance the benefits or affect the costs of underground construction, identified in the advantage-disadvantage analysis, will provide the basis for decision. Examples of factors which may affect a decision to underground would include the availability of suitable existing corridors, or the likelihood of pronounced visual impact.

(2) The advantage-disadvantage analysis required by this section shall include at a minimum the items enumerated in section 102.4 of this Part. Data and/or all pertinent information for each item must be presented for both the underground and overhead alternative. The analysis of cost should be made on a present-worth basis for both alternatives over a period long enough to allow for appropriate incremental construction. Each submission shall contain an explanation of why the proposed transmission facility or portion thereof should be placed overhead or underground.

(b) The analysis shall include:

(1) Availability of existing corridors suitable for additional transmission facilities. (The availability of suitable existing corridors through a priority area, for example, may reduce the relative benefits of underground construction.)

(2) Capital construction costs. (Costs that may be capitalized under the uniform system of accounts.)

(3) Construction expense costs. (Costs that may not be capitalized.)

(4) Right-of-way acquisition costs.

(5) Anticipated total operation and maintenance costs including power losses for the depreciable life of the plant, discounted to present-worth, when the present worth of such losses is significant in comparison to other costs (subparagraphs (ii), (iii), and (iv) of paragraph (2) of subdivision (a) of section 102.2 of this Part).

(6) Relevant technological considerations.

(7) The relative effect on vegetation, wildlife, soils, erosion, streams, and other such natural features (as noted in biological surveys, water quality ratings, and land management policies and practices) of the construction methods proposed.

(8) The relative visual impact including incremental impact compared to existing surroundings.

(9) Relative availability of right-of-way for other uses: e.g., parks, recreation, farming, transportation.

§ 102.5 Reports

In addition to the reports required under section 102.3 of this Part, each utility shall also report semiannually transmission facilities constructed in the preceding six months but less than one mile in length. The report shall specify which of said overhead transmission facilities were constructed in areas listed under section 102.3(a) of this Part.

§ 102.6 Effective date

The procedures under this Part shall take effect six months after filing in the office of the Department of State.