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ARTICLE 2. ISSUANCE OF CERTIFICATES AND PERMITS

PART 21. GAS, ELECTRIC, STEAM, WATERWORKS, TELEGRAPH AND TELEPHONE CORPORATIONS AND MUNICIPALITIES

§ 21.1 Summary of legal requirements

(a) Before a public service corporation under the jurisdiction of this commission may begin construction of a gas, electric or steam plant in territory where it has not previously been authorized, an application must be made which must comply with the requirements of section 68 or 81 of the Public Service Law.

(b) If a municipality proposes to confine construction of gas or electric plants to territory within its own borders, no authority from the commission is necessary. (*General Municipal Law, section 364.*) If the municipality proposes to extend its gas or electric system beyond its municipal borders, a franchise must be secured from the municipality in which the construction is to be made and a certificate of authority secured from the commission.

(c) A municipality may not construct or operate a steam plant even within its own borders until securing a certificate of authority from the commission.

(d) A waterworks corporation may not begin construction of* new plant until it has filed with the commission a certified copy of an order issued by the Water Power and Control Commission approving construction. If the proposed construction parallels or duplicates mains or conduits of an existing water supply company, construction may not be begun until a certificate of convenience and necessity is secured from this commission. * So in original. "a" inadvertently omitted

(e) Consent from the commission is not necessary before a municipality may construct a water plant. (Public Service Law, section 89-1.)

(f) Telegraph and telephone corporations formed subsequent to September 1, 1910, except radio-telephone utilities defined in Part 645 of this Title, which were in operation or which had applied to the appropriate Federal agency for an allocation of frequency on or before October 1, 1973, may not begin construction of a telegraph or telephone line until permission and approval of the commission and its certificate of public convenience and necessity have been secured. If the company proposes to construct and lay lines of electrical conductors underground, a franchise must be secured from the municipality in which such construction is to take place.

(g) An individual or partnership may not begin the construction of a telegraph or telephone line until a certificate of public convenience and necessity is secured from the commission. In all cases where required, a franchise must be secured from the municipalities in which the construction is to take place before a certificate of public convenience and necessity will be granted.

(h) Within 30 days after the filing of a petition for a certificate of public convenience and necessity, either the director of the division of the Department of Public Service most concerned with the petition, the director's representative or counsel shall advise the petitioner of any deficiencies in such petition. The certification proceedings shall be deemed to commence on the date the petition complies with the applicable legal requirements and shall be conducted as expeditiously as possible.

§ 21.2 Rules applicable to all petitions

(a) The petition shall state the names of all corporations, including municipalities, rendering the kind of service for which the petitioner requests authority in the territory covered by the application.

(b) The petition shall be accompanied by a certified copy of the franchise granted by the municipality or municipalities in which the construction is proposed or authority is to be exercised, with a verified statement by a responsible official of the petitioner that all municipal consents have been secured that are required by law. Petitions by waterworks corporations shall be accompanied by a certified copy of the order of the Water Power and Control Commission authorizing construction.

(c) If the petitioner has previously secured authority from the commission to exercise the powers granted under a prior franchise that has expired, and has plant in operation, the petitioner shall request only authority to exercise the rights and privileges granted by the new franchise.

(d) If the petitioner has been granted any permit, license or authority by any Federal authority relative to the pending petition, the petitioner shall include a certified copy of such original permit, license, or authority and all amendments thereto.

(e) This section shall not apply to telephone corporations that provide service primarily over their own or leased facilities and that do not provide local exchange service. This section shall not apply to non-incumbent telephone corporations that provide local exchange service primarily over their own or leased facilities.

§ 21.3 Evidence to be presented at hearing

At the hearing, the applicant shall be prepared to show by competent evidence:

(a) Description and population of the territory within which it proposes to exercise authority granted by the franchise or consent and to begin construction, including the names of all cities, towns and villages; also the dates when construction will begin and service will be provided.

(b) Description of the plant and system to be constructed and the estimated cost thereof.

(c) The manner in which the cost is to be financed. If the municipality is to be bonded, there shall be submitted a certified copy of the proposition submitted to the voters and the vote thereon.

(d) The rates to be charged for the classes of service rendered.

(e) Estimated revenues to be derived from operations covered by the petition and the estimated expenses of such operations, each to be complete and in detail for each of the first three years of service; also estimate made from an actual survey of the territory of the number of prospective customers at the end of the first, second and third years of service showing for each date the number of prospective customers in the residential, commercial and industrial classes of service.

(f) The facts upon which it relies to entitle it to exercise the rights and privileges petitioned for, including evidence of the economic feasibility of the enterprise, proof of the applicant's ability to finance the project and to render adequate service and that the proposal is in the public interest.

(g) Where similar services are being rendered in all or part of the area proposed to be served, the public need for the proposed service including, but not limited to:

(1) the adequacy of the existing service to meet the reasonable needs of the public in the territory involved;

(2) the ability and willingness of the present operator(s) to provide such reasonably adequate service; and

(3) the degree of competition desirable or required by the public interest.

(h) This section shall not apply to telephone corporations that provide service primarily over their own or leased facilities and that do not provide local exchange service. This section shall not apply to non-incumbent telephone corporations that provide local exchange service primarily over their own or leased facilities.

§ 21.4 Certification of radio-telephone utilities

(a) The commission shall grant a certificate of public convenience and necessity for the operation of a radio-telephone utility to any applicant:

(1) who shows that its certification:

(i) would provide an entirely new service to the area to be served; or

(ii) would enhance competition in the area to be served; and

(2) who either:

(i) has obtained an allocation of frequency from the proper Federal authority; or

(ii) has applied for an allocation of frequency from the proper Federal authority.

(b) The hearing provided for in section 99 of the Public Service Law will, unless otherwise ordered, be conducted before the commission on the application, exhibits or other information submitted by the applicant. The applicant will be required to publish notice of the application for a certificate and relevant public comments on it will be accepted during the 21-day period thereafter.

(c) The application shall contain the following information:

(1) Description and population of the territory within which it proposes to exercise authority granted by the franchise or consent to begin construction, including the names of all cities, towns and villages; also the dates when construction will begin and service will be provided.

(2) General description of the plant and system to be constructed.

§ 21.5 Amendments to radio-telephone utility certificates

Whenever a radio-telephone utility proposes to make any change which would alter its service contours, as authorized by its certificate of public convenience and necessity, it shall petition the commission for an amendment of said certificate. Said petition shall describe in detail the proposed reliable service contour. The commission may act without hearing upon petitions which it determines will have no significant impact upon the extent of a radio-telephone utility's service territory.

§ 21.6 Service changes

Any new service offering, or change in an existing service offering, which does not affect a radio-telephone utility's service territory, as described in its certificate of public convenience and necessity shall be implemented by tariff filing. The certificate of public convenience and necessity need not be amended.

§ 21.7 Certification of resellers of telephone service

(a) The commission shall grant a certificate of public convenience and necessity for the resale of telephone services to any applicant who shows that its certification:

(1) would provide an entirely new service to the area to be served; or

(2) would enhance competition in the area to be served.

(b) The hearing provided for in section 99 of the Public Service Law will, unless otherwise ordered, be conducted before the commission on the application, exhibits or other information submitted by the applicant. The commission will cause a notice of the application for a certificate to be published in the State Register, and relevant public comments on it will be accepted during the 21-day period thereafter.

(c) The application shall contain the following information:

(1) name and address of the resale applicant;

(2) location of its principal business office;

(3) names and addresses of the owners of the resale applicant or a copy of its certificate of incorporation; and

(4) general description of the service to be offered and the territory within which resale service will be provided.

(d) When a resale applicant, reseller or other entity communicates with the telephone company to obtain facilities and service for resale, that applicant, reseller or entity shall identify itself as intending to resell service.

§ 21.8 Alternate service provision for resale

The availability of resale telephone service shall in no way interfere with the right of an owner or occupant of premises to obtain service from the duly certificated landline company serving the territory.

§ 21.9 Filing with other governmental agencies

Radio-telephone utilities and resellers of telephone service shall file contemporaneously with this commission a verified copy of applications or petitions being filed by it with other Federal, State or local governmental agencies whenever such applications or petitions affect radio-telephone operations in New York State.

§ 21.10 Expedited proceedings on noncontested applications

(a)(1) Upon the motion of any applicant, the commission may, where it appears to be in the public interest, order that the public hearings required by section 68 of the Public Service Law on an application by a gas corporation or electric corporation, or by section 99 of the Public Service Law on an application by a telephone utility, for the granting, modification or renewal of a certificate of public convenience and necessity, be held before the commission on the application and such exhibits, prepared testimony or other information as may be filed by the applicant or by any party or staff counsel, without oral testimony.

(2) A motion by an applicant for an expedited proceeding under paragraph (1) of this subdivision shall be made at any time before the commission acts on its application. The applicant shall serve a copy of the motion for an expedited proceeding and the public notice required by paragraph (3) of this subdivision on each person or municipality, if any, entitled to service of a copy of the application.

(3) Within 14 days after the date on which it files its motion, an applicant moving under paragraph (1) of this subdivision shall publish in a newspaper, or newspapers of general circulation, in all the areas in which the franchise sought to be granted or renewed would permit it to operate, a notice:

(i) briefly describing the subject matter of the application;

(ii) stating that the applicant has moved that the public hearing required by the Public Service Law be held before the commission on the basis of the application and such exhibits, prepared testimony and any other information as may have been filed by any party or staff counsel, and that oral testimony not be taken; and

(iii) stating that any person opposed to the granting or renewal of the franchise should, within 10 days of the date of the publication of the notice, notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, N.Y. 12223, of the reasons for the opposition.

(b) The commission may grant a motion made under subdivision (a) of this section if:

(1) the applicant has served a copy of its motion, and the public notice required, upon each party entitled to receive a copy of the application; and

(2) no person, municipality or agency has filed with the secretary, within 10 days of the date of publication of the newspaper notice required by paragraph (3) of subdivision (a) of this section, a written objection stating substantive reasons for opposition to the granting of such a motion.

(c) If, at the hearings provided by subdivision (a) of this section, the commission finds that there is a substantive basis for opposition to the granting of the certificate, it shall order that the matter be set for further hearings.

(d) The secretary is directed to file this resolution with the Secretary of State.

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ARTICLE 3. TRANSFER OF CERTIFICATES, PERMITS AND/OR PROPERTY

PART 31. GAS, ELECTRIC, STEAM, WATERWORKS, TELEGRAPH AND TELEPHONE CORPORATIONS

§ 31.1 Contents of petition

Applications under sections 70, 83, 89-h, or 99 of the Public Service Law, for approval of transfer or lease of consents, franchises, works or systems, or agreements affecting them shall be by joint or separate petitions, duly verified by all parties to the transfer or lease and shall show in detail the reasons for what is proposed, all of the facts warranting the same and that the transfer or lease is in the public interest. The petition shall state:

(a) In case of transfer, the facts called for in subdivisions (f)-(i) and (p) of section 3.1 of this Chapter applicable to property to be transferred.

(b) General description of the property to be transferred or leased.

(c) List of the franchises, consents and rights to be transferred or leased, 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 and rights duly certified by the proper official.

(d) A certified copy of the approval of the municipality to the transfer or lease if any of the local consents or franchises involved required that they shall not be transferred or leased without the consent of the municipality granting the same.

(e) A copy of the proposed assignment, contract, lease or agreement to be approved.

(f) Inventory of the property proposed to be transferred or leased with the original cost of such property, original cost being the cost to the person first devoting the property to public service, and person being an individual, a corporation, a partnership, an association, a joint stock company, a business trust or any organized group of persons whether incorporated or not, or any receiver or trustee.

(g) In said inventory, the property shall be classified according to the requirements of the system of accounts prescribed by this commission applicable to the transferor or lessor.

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

(i) The cost of said property as shown upon the balance sheet of the transferor or lessor.

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

(k) 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.

(l) 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 transferred or leased and balance sheet of the transferor or lessor and of the transferee or lessee of the latest available date.

§ 31.2 Evidence to be presented at hearing