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### 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 the order issues a directive or prohibition. A certified copy or a copy bearing the seal of the Commission will be provided to any party requesting one.

(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.

(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.

(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, or page limitation for any document (as defined in §3.5(a)) required or authorized to be submitted to the Commission (other than a document submitted 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 nonreviewable.

(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 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 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 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

(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.

(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.

(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.

(h) 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) 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) A document requesting the Commission to take any action requiring prior notice pursuant to the State Administrative Procedure Act shall include a draft of a notice in the form required by that statute. 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.

### § 3.6 Motion practice

(a) All motions shall be in writing, except that 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 by overnight delivery service; or within 13 days after service if service was made by mail.

(2) The response shall be addressed to and filed with the official to whom the motion was addressed.

(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 petition for rehearing shall be submitted to 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 response shall be filed with the Secretary, and a copy of the response 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) 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 proceeding involving small utilities.\*\* (1) The 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 the notification should be filed with the Director of the appropriate Division (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 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 by the Director of the appropriate division, if a 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 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.

\* 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.

\*\*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.