

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 98-M-1210 - In the Matter of the New York City  
Watershed Memorandum of Agreement and  
Watershed Regulations.

STATEMENT OF POLICY AND RESOLUTION REGARDING  
THE NEW YORK CITY WATERSHED REGULATIONS

Issued and Effective: August 31, 1998

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

Maureen O. Helmer, Chairman  
John B. Daly  
Thomas J. Dunleavy  
James D. Bennett

CASE 98-M-1210 - In the Matter of the New York City  
Watershed Memorandum of Agreement and  
Watershed Regulations.

STATEMENT OF POLICY AND RESOLUTION REGARDING  
THE NEW YORK CITY WATERSHED REGULATIONS

(Issued and Effective August 31, 1998)

BY THE COMMISSION:

BACKGROUND

Executive Order No. 51, issued May 20, 1997, requires that State departments, agencies, boards and commissions undertaking certain activities within the watershed of the New York City water supply shall comply with the requirements of the Watershed Regulations promulgated by the New York City Department of Environmental Protection (NYC DEP) and the New York State Department of Health (DOH). Order No. 51 lists sixteen activities specifically controlled under the Watershed Regulations, ranging from discharge or storage of pesticides or pathogenic materials to storage of highway winter maintenance materials. Under the Order, a State entity shall provide notice of its plans to perform a controlled activity to NYC DEP thirty days before the activity is commenced.

Neither the Public Service Commission nor the Department of Public Service directly performs any of the listed activities within the Watershed. Under 16 NYCRR §84 et seq., however, we regulate gas and electric utility application of herbicides to transmission rights-of-way, one of the activities governed by the Watershed Regulations. Moreover, a prerequisite to construction of significantly-sized gas and electric

transmission lines is our certification under Public Service Law (PSL) Article VII.<sup>1/</sup> Similarly, new electric generating facilities of more than 80 MW in size must be certified by the Board on Electric Generating Siting and the Environment (Siting Board) under PSL Article X.<sup>2/</sup> While no Article VII or Article X proceedings are pending within the watershed, the Watershed Regulations govern many of the activities also regulated under those Articles and our implementing regulations.<sup>3/</sup>

In addition, some regulated water utilities, including New York-American Water Company and United Water New Rochelle, Inc., purchase some of their water supply from New York City. These regulated utilities rely on the purity of that supply in furnishing potable water at reasonable rates. Degradation of the New York City supply's quality would therefore affect our regulation of these water utilities.

As a result, preserving the purity of the New York City water supply is an important public interest under the Public Service Law, and implementation of the ROW regulations and of Article VII and Article X should be coordinated with the Watershed Regulations. Means for achieving that goal are set forth below.

#### DISCUSSION

Under our right-of-way (ROW) regulations, 16 NYCRR §84 et seq., gas and electric utilities are required to develop and file ROW management procedures. These procedures include methods and plans for managing vegetation within rights-of-way through application of herbicides. The Watershed Regulations (WR) control, and in some circumstances prohibit, the discharge

---

<sup>1/</sup> PSL §120 et seq.

<sup>2/</sup> PSL §160 et seq.

<sup>3/</sup> The Chairman of the Commission is the Chairman of the Siting Board and the Board "shall be in the Department of Public Service." PSL §160(4).

and use of pesticides.<sup>1/</sup> Pesticides are defined as including herbicides at WR §18-16(77).

The ROW regulations require the utilities to develop and file ROW management procedures. As a result, the ROW regulations are primarily procedural and informational.<sup>2/</sup> Utility compliance with them and the Watershed Regulations affecting herbicide application should not engender a great deal of difficulty. To achieve that compliance, utilities should reflect, in the planning and procedures directed under §84, the substantive requirements of the Watershed Regulations that adhere to pesticides and herbicides.

The ROW regulations already require that the utilities' ROW reports reflect discussion of other regulatory and licensing authorizations needed to conduct ROW management operations.<sup>3/</sup> The Watershed Regulations fall within the ambit of the necessary authorizations. Moreover, our requirements are expressly intended to "allow the utilities to develop their own ROW maintenance programs, but yet ensure that adequate records are maintained so that our staff may periodically examine them,"<sup>4/</sup> and, if appropriate, report on them to us. As a result, the ROW regulations do not conflict with the substantive requirements imposed by the Watershed Regulations.

Jurisdiction over the construction of gas and electric transmission lines is exercised under Article VII of the Public Service Law, and similar jurisdiction is exercised by the Siting Board over the construction of electric generation stations under Article X of the Public Service Law. Under these statutes,

---

<sup>1/</sup> WR §18-43.

<sup>2/</sup> Under §84.1, however, the aerial spraying of herbicides on ROWs cannot commence without our pre-approval; applicants seeking that approval must describe the means for also complying with the Watershed Regulations.

<sup>3/</sup> 16 NYCRR §84.2(h).

<sup>4/</sup> 16 NYCRR §84.3(b).

construction and operation of gas and electric facilities in compliance with environmental health and safety standards is a paramount concern.<sup>1/</sup> Our regulations, at 16 NYCRR §85 et seq. for transmission lines and at 16 NYCRR §1000 et seq. for electric generation stations, set forth detailed requirements to ensure that the design and operation of those facilities results in minimum feasible adverse environmental impacts. Many of the issues addressed under the Articles VII and X regulations, however, also fall within the purview of the Watershed Regulations.<sup>2/</sup>

Implementation of these regulatory requirements may be coordinated. Articles VII and X provide that all state and local laws are binding on the entities issued certificates under those statutes, except to the extent that the local regulation is found unduly restrictive.<sup>3/</sup> For the Article VII regulations, we announce that we will presume that the Watershed Regulations are not unduly restrictive.<sup>4/</sup> Article VII applicants must demonstrate either their compliance with those regulations or that the presumption should not adhere to their particular circumstances. Our staff will recommend that the Siting Board adopt a similar presumption, at the time, if ever, when an Article X applicant proposes construction of a generation facility within the watershed.

---

<sup>1/</sup> PSL §122(1)(c); §164(1)(c)(v).

<sup>2/</sup> A list of the requirements that overlap in the two sets of regulations is provided at Appendix A.

<sup>3/</sup> PSL §126(1)(f); §168(2)(d).

<sup>4/</sup> Under 16 NYCRR §102, utilities proposing to build certain types of transmission facilities outside the scope of Article VII must file a report on the proposed construction, and include with the report any approval obtained from another governmental agency. An approval from the NYC DEP under the Watershed Regulations is the type of approval that should appear in a §102 filing.

CONCLUSION

These policies should harmonize implementation of the Public Service Law regulations and the Watershed Regulations. The policies therefore effectuate the intent of Executive Order No. 51 and further the public interest.

(SIGNED)

JOHN C. CRARY  
Secretary

## Article VII and X Regulations on Preservation of Water Quality

- 16 NYCRR §85-1.1      Transmission lines less than 10 miles long installed and maintained in compliance with the Commission-approved Certificate.
- §1.2 & 1.3      Minimize impacts on sensitive resources, including water resources, for transmission lines less than 10 miles long.
- §86.5(a)      Environmental impact statement for transmission lines of 10 miles or more in length.
- §86.5(b)      Provide plans for protecting water resources for transmission lines 10 or more miles in length.
- §1000.7      Certification of water quality by the Siting Board.
- §1001.1(a)      Description of any changes to the existing environment.
- §1003.3(b)(1)      Assessment of potential impacts on water supply quality and quantity.

DEP & DOH Watershed Regulations

- §18-32      Discharge of hazardous substances and hazardous waste.
- §18-34      Discharge and storage of petroleum products.
- §18-36      Design construction and operation of wastewater treatment plans.
- §18-39      Stormwater discharge, stormwater pollution prevention plans, and construction of impervious surfaces.
- §18-43      Discharge and storage of pesticides and herbicides.

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

RESOLUTION

CASE 98-M-1210 - Proceeding on Motion of the Commission as to the New York City Watershed Memorandum of Agreement and Watershed Regulations.

At a session of the Public Service Commission held in the City of Albany on August 19, 1998, by unanimous vote of its members present,

WHEREAS, in Executive Order No. 51, Governor George E. Pataki directed that State departments, agencies, boards and commissions undertaking activities within the New York City Watershed comply with the substantive requirements of the Watershed Regulations promulgated by the New York City Department of Environmental Conservation and the New York State Department of Health in conformance with the New York City Watershed Memorandum of Agreement;

WHEREAS, the Watershed Regulations will protect the public interest by preventing contamination and degradation of New York City's water supply;

WHEREAS, the Public Service Commission does not itself undertake any of the activities listed in Executive Order No. 51 as within the purview of the substantive requirements of the Watershed Regulations, but the Public Service Commission does regulate utilities and persons that engage in some of the activities within the purview of the Watershed Regulations;

WHEREAS, the implementation of the Public Service Commission's regulations should be coordinated with the requirements of the Watershed Regulations, in order to protect the public interest in the purity of New York City's water supply and effectuate the purposes of Executive Order No. 51;

RESOLVED:

1. That the Public Service Commission issue a Policy Statement Regarding the New York City Watershed Regulations, coordinating implementation of its regulatory requirements with the regulation of activities under the Watershed Regulations.

2. That this Resolution and a copy of the Policy Statement on the New York City Watershed Regulations be forwarded to the Executive Chamber of the Governor of the State of New York.