

N.Y. Comp. Codes R. & Regs. tit. 21

CHAPTER X

Power Authority of the State of New York

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CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 450.

PROCEDURES WITH RESPECT TO RESALE OF POWER

450.1 Failure to comply with provisions of contract

§ 450.1 Failure to comply with provisions of contract

Whenever the authority shall deem it necessary, in order to carry out its obligations under the Power Authority Act and the authority's contracts for the sale of power for resale, to investigate the failure of any customer of the authority to comply with the provisions of its contract governing the resale of power and energy or failure to comply with any request of the authority made pursuant to such provisions, or to investigate the operations, service, practices, accounting records, rates, charges, rules and regulations, or to make valuations or revaluations of property of any such customer of the authority, such customer shall be charged with and pay such portion of the compensation and expenses of any member, officer, agent, consultant or employee of the authority, including any agent, consultant or employee temporarily engaged by the authority, as is reasonably attributable to such investigation, valuation or revaluation. The authority shall ascertain the costs, including the compensation and expenses of any member, officer, agent, consultant or employee, and shall determine the amount to be paid by the customer and a bill shall be rendered therefor by the authority to the customer. The amount of any such bill so rendered shall be paid to the authority by such customer within 30 days from the date of its rendition unless, within such period, the customer so billed shall request an opportunity to be heard as to the amount thereof. If such a request is made, the authority shall designate a member of the authority or a member of the staff to conduct a hearing and report to the authority. The authority shall reconsider the charges and advise the customer of its determination. The bill as finally rendered shall be paid within 30 days after the date of service of such determination.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 451.

CONSUMER DEPOSITS--MUNICIPALITIES AND COOPERATIVES

451.1 Consumer deposits—nonresidential

451.2 Consumer deposits--residential

§ 451.1 Consumer deposits--nonresidential

(a) Deposit. Any municipality or cooperative in the State of New York which purchases power from the authority may require any nonresidential customer to whom such municipality or cooperative shall supply electricity to deposit a reasonable sum of money, according to the estimated quantity of electricity necessary to supply the consumer for two calendar months, to secure payment for such electricity.

(b) Calculating and crediting of interest. Every municipality or cooperative shall allow every nonresidential customer, from whom a deposit is required, interest on the amount deposited at a rate prescribed quarterly by the municipality or cooperative. Each quarter, the municipality or cooperative shall select the lowest interest rate available from a pool of local area bank savings accounts. The selected rate shall be used to accrue interest on consumer deposits each quarter. A weighted average interest rate shall be calculated using the quarterly interest rates over the period a customer's deposit is held; and shall be paid to the customer upon the return of the deposit.

(c) Return of deposit. If any nonresidential customer is not delinquent in the payment of bills, as defined in section 451.2(a)(5) of this Part, during the two-year period from the payment of the deposit by the customer, the deposit shall be refunded promptly without prejudice to the municipality's or cooperative's right to require a future deposit in the event that the customer thereafter becomes delinquent. As of September 1, 1986, all deposits held for more than two years must be returned promptly to nondelinquent customers, and in no event later than the next bill for service thereafter.

§ 451.2 Consumer deposits--residential

(a) Deposit.

(1) A municipality or cooperative in the State of New York which purchases power from the authority may require, subject to the restrictions set forth in this section, a new or current residential customer to whom such municipality or cooperative shall supply electricity to deposit a sum of money, which shall be in the amount specified in paragraph (9) of this subdivision, to secure payment for such electricity or for the rental of fixtures, instruments and facilities actually supplied.

(2) For the purposes of this section, a new residential customer is an applicant for electric service to a dwelling unit which such customer uses for his or her residential purposes and where business rates do not apply to the service, and who does not qualify as a current residential customer. A current residential customer is a customer who receives electric service to a dwelling unit which such customer uses for his or her residential purposes and where business rates do not apply to the service. A current residential customer includes an applicant for electric service who has transferred dwelling units within a municipality's or cooperative's service territory and for whom there is a recent payment history. A seasonal customer is a person who applies for and receives electric service periodically each year, intermittently during the year, or at other irregular intervals. A short-term customer is a person who requires electric service for a specified period of time that does not exceed one year. A customer who receives continuous electric service for more than one year shall not be considered a seasonal or short-term customer.

(3) Unless authorized by the authority under paragraph (6) of this subdivision, no municipality or cooperative shall require any new residential customer to post a security deposit as a condition of receiving electric service, unless such new customer is a seasonal or short-term customer as defined in paragraph (2) of this subdivision.

(4) As of December 1, 1985, no municipality or cooperative shall, unless authorized by the authority under paragraph (6) of this subdivision, require a current residential customer, other than a delinquent customer, to post a security deposit, and deposits held on September 1, 1986 shall be returned promptly to nondelinquent residential customers, and in no event later than the next bill for service thereafter.

(5) Notwithstanding the requirements of paragraph (4) of this subdivision:

(i) A municipality or cooperative may continue to demand deposits as a

condition of receiving electric service from customers who are seasonal customers or short-term customers as defined in paragraph (2) of this subdivision.

(ii) A municipality or cooperative may require a deposit from a current residential customer as a condition of service if that customer is delinquent in payment of his or her electric bills.

(iii) A customer is delinquent for the purpose of a deposit assessment if such customer:

(a) accumulates two consecutive months of arrears without making reasonable payment, defined as one half of the total arrears, of such charges before the time that a late payment charge would become applicable, or fails to make a reasonable payment on a bimonthly bill within 50 days after the bill is due, provided that the municipality or cooperative requests such deposit within two months of such failure to pay; or

(b) had electric service terminated for nonpayment during the preceding six months. A municipality or cooperative intending to require a deposit under clause (a) of this subparagraph shall provide a customer with written notice, at least 20 days before it may assess a deposit, that the failure to make timely payment will permit the municipality or cooperative to require a deposit from such customer.

(iv) If a municipality or cooperative requires a deposit from a current residential customer who is delinquent by virtue of his or her failure to make a reasonable payment of arrears, as provided in this paragraph, it shall permit such customer to pay the deposit in installments over a period not to exceed 12 months.

(6) Notwithstanding the requirements of paragraphs (3) and (4) of this subdivision, a municipality or cooperative may demand and hold deposits from new or current residential customers as a condition of electric service if the authority, after investigation and hearing, so authorizes such practice, upon a finding that the collection and maintenance of such deposits is cost-effective for the municipality or cooperative as a whole without regard to the municipality's or cooperative's cash flow and the availability of capital to the municipality or cooperative.

(7) No municipality or cooperative shall require any person it knows to be a recipient of public assistance, supplemental security income benefits or additional State payments, to post a security deposit after November 30, 1985, nor shall any municipality or cooperative hold such deposit from such known recipient after January 31, 1986.

(8) No municipality or cooperative shall demand after November 30, 1985, or hold after January 31, 1986, a deposit from any new or current residential customer it knows is 62 years of age or older unless such customer has had service terminated by the municipality or cooperative for nonpayment of bills within the preceding six months.

(9) In any case where customer deposits are authorized by this section, a municipality or cooperative may require a new or current residential customer to deposit a reasonable amount of money, not greater than twice the average monthly bill for a calendar year, except in the case of electric space-heating customers, where deposits may not exceed twice the estimated average monthly bill for the heating season, in order to secure payment for services actually rendered or for the rental of fixtures, instruments and facilities actually supplied.

(b) Calculation and crediting of interest. Every municipality or residential cooperative shall allow every customer from whom a deposit is required, interest on the amount deposited at a rate prescribed quarterly by the municipality or cooperative. Each quarter, the municipality or cooperative shall select the lowest interest rate available from a pool of local area bank savings accounts. The selected rate shall be used to accrue interest on consumer deposits each quarter. A weighted average interest rate shall be calculated using the quarterly interest rates over the period a customer's deposit is held; and shall be paid to the customer upon the return of the deposit.

(c) Return of deposit. If any customer is not delinquent in the payment of bills, as defined in paragraph (a)(5) of this section, during the one-year period from the payment of the deposit by the customer, the deposit shall be refunded promptly without prejudice to the municipality's or cooperative's right to require a future deposit in the event that the customer thereafter becomes delinquent.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 452.

RESALE RATES--MUNICIPALITIES AND COOPERATIVES

- 452.1 Policy
- 452.2 Annual reports
- 452.3 Rate revisions
- 452.4 Adjustment of rates in accordance with changes in the cost of purchased power

§ 452.1 Policy

Resale rates of municipalities and cooperatives purchasing power from Power Authority of the State of New York shall be established and revised from time to time in accordance with the following:

"The Power Authority Act (New York Public Authorities Law §§ 1001 to 1015) requires that power and energy from authority's projects be supplied to domestic and rural consumers at the lowest possible rates and that the rates, services and practices of purchasing, transmitting and distributing public agencies or companies in respect to the power generated shall be governed by the provisions and principles established in the contracts made by authority with such agencies or companies and not by regulations of the Public Service Commission or by general principles of Public Service Law regulating rates, services and practices."

"It further provides for full and complete disclosure to authority of all factors of cost in the transmission and distribution of power, so that rates to consumers may be fixed initially in its contracts and may be adjusted from time to time on the basis of true cost data, provided that in fixing such cost of transmission and distribution no account shall be given to any franchise value, going value or goodwill based upon the existence of the contract and the availability of the power for sale by the transmitting or distributing company or any company associated therewith."

"The act also provides for periodic revisions of the service and rates to consumers on the basis of accurate cost data obtained by such accounting methods and systems as shall be approved by authority and in furtherance and effectuation of the marketing policy provided for in the act." "In establishing rates the purchaser shall not be entitled to any profit on the sale of the power and energy purchased from authority, but a reasonable return shall be allowed in an amount to be approved by authority on the purchaser's investment in distribution and other facilities. There shall also be allowed, in lieu of taxes, an amount to be approved by authority for payment into the general fund of the purchaser which shall not exceed a maximum amount to be calculated by applying the prevailing property tax rates to the depreciated original cost of the purchaser's tangible property which is used in the generation, transmission and distribution of electric power and energy. The purchaser shall keep its books, accounts and records pertaining to the generation, purchase, distribution or sale of power according to procedures to be approved by authority, and all funds received, used and expended in connection therewith shall be kept separate from

other funds of the purchaser. Nothing herein shall be construed to prevent the allowance, as an element of cost, of payments made into reasonable and proper reserve funds established by the purchaser and approved by authority."

§ 452.2 Annual reports

Each New York municipal and cooperative system purchasing power from the authority subject to contract provisions providing for regulation of resale rates by the authority, shall file an annual report in the form annexed hereto (Appendix 10-A, *infra*) with the authority within 90 days after the close of its fiscal years. Cooperative electric systems may, in lieu of filing the annual report in the form annexed hereto, file Rural Electrification Administration form and Rural Electrification Administration form 7a within 90 days after the close of their fiscal year.

§ 452.3 Rate revisions

(a) In considering applications for rate revisions, the authority will consider annual reports submitted by the applicant in accordance with section 452.2 of this Part. Applications for rate revisions shall be accompanied by such information as the authority may require to update information contained in the most recent annual report submitted by the applicant and such other information as the authority deems necessary to demonstrate that the requested rate revision is needed and is in compliance with the intent and purposes of the Power Authority Act, as amended (Public Authorities Law, article 5, title 1), and the Niagara Redevelopment Act (Public Law 85-159).

(b) Local public hearings re rate revision. In connection with any request for rate revision by the preference customers of the Power Authority, a contracting municipality shall hold a public hearing at an appropriate local office to afford reasonable opportunity for participation by all interested parties, or their representatives concerning such proposed rate revision. In the event there is a governing electric commission or board, the public hearing should be a joint undertaking between members of such commission or board and the municipal governing body. In order to provide for a reasonable opportunity for participation by the residents of the service area in which electric service is provided there shall be published in the local media, newspapers or otherwise, notice of such hearing in the manner required for an official notice to be issued by any municipality. The listing of such a hearing as an agenda item to be considered in addition to other items scheduled for a public hearing or consideration published in accordance with local law, custom or requirement shall constitute compliance with this provision. A contracting cooperative seeking such rate revision shall hold a meeting, upon 30 days' notice unless such notice be waived by its members, at which time such proposal for a rate revision shall be the subject of approval or disapproval. At this hearing or meeting as the case may be it shall be necessary to have data available to answer reasonable and responsible questions that could be reasonably anticipated. Such data should include, but not be limited to, the following:

(1) comparison of present and proposed net rates;

(2) comparison of annual revenues by amount and percent change for each service classification under present and proposed rates; and

(3) typical net monthly bills comparison for each service classification under present and proposed rates by amount and percent change. If at such hearing or meeting as the case may be or the conclusion thereof, application for such request rate revision is approved, there shall be furnished to the authority a transcript of said hearing or meeting, if any, and if there be none a summary of the proceedings attested to by the official of the municipality or cooperative designated to act in the premises together with a request and recommendation to implement the proposed revised rates included in the form of an appropriate duly executed board resolution.

§ 452.4 Adjustment of rates in accordance with changes in the cost of purchased power

(a) Municipalities and cooperatives purchasing their full power requirements from the Power Authority of the State of New York may include in their resale rates an adjustment clause for recovery of changes in the delivered cost of purchased power subject to such reconciliation as the authority may deem appropriate. Municipalities or cooperatives which elect to use such an adjustment clause may file statements to their rate schedules in lieu of rate revisions. Such statements, which shall be in a form prescribed by the Power Authority, shall not be part of the rate schedule, but a copy of each effective statement will be kept available with each rate schedule to which it applies. The first such statement of each municipality or cooperative shall be filed with the Power Authority and become effective on a date specified by the authority. Thereafter, each such statement must be filed with the Power Authority not less than three days prior to the date on which it is proposed to be effective.

(b) When municipalities and cooperatives elect to file statements in accordance with this section, such statements must contain:

(1) identification of the schedules and service classifications to which they apply;

(2) the present purchased power cost per KWh and its derivation;

(3) the base purchased power cost per KWh and its derivation;

(4) the difference per KWh between the present purchased power cost per KWh and the base purchased power cost per KWh;

(5) the factor of adjustment for distribution system efficiency;

(6) the purchased power adjustment per KWh (exclusive of any surcharge/credit per KWh) determined by applying the factor of adjustment for distribution system efficiency to the difference between the base purchased power cost per KWh and the present purchased power cost per KWh;

(7) the surcharge/credit per KWh and its derivation, if utilized;

(8) the purchased power adjustment per KWh (inclusive of the surcharge/credit per KWh if utilized);

(9) the effective date of the increase or decrease in rates.

(c) In connection with statements filed pursuant to this section:

(1) The term purchased power cost is defined as the total cost of power including transmission and wheeling charges at the point of delivery to the municipal or cooperative system of electricity purchased from the Power Authority for resale.

(2) The base purchased power cost per KWh is determined by calculating the average cost per KWh of purchased power by applying the authority's wholesale, transmission and wheeling rates to billing quantities for a 12-month period to be determined by the authority and dividing the total cost, so calculated, by KWh delivered during the period. Wholesale, transmission and wheeling rates to be used in the calculation are those which a specific customer has reflected in its base retail rates.

(3) The present purchased power cost per KWh is determined by calculating the average cost per KWh of purchased power by applying the authority's current wholesale, transmission and wheeling rates to billing quantities in the current billing period.

(4) The factor of adjustment for distribution system efficiency is determined by dividing the number of kilowatt hours purchased at the point of delivery during the recently completed fiscal year by the number of kilowatt hour sales to all customers under all service classifications during the same fiscal year.

(5) The surcharge/credit per KWh is determined by dividing the surcharge or credit as hereinafter described by KWh delivered during the period and adjusting for distribution system efficiency. The surcharge shall be an amount approved by the Power Authority, as a function of an individual municipality's or cooperative's James A. FitzPatrick nuclear power allocation and the applicable demand charge which, at the option of the municipality or cooperative, may be applied during its peak consumption season. The surcharge shall be offset by a "credit" applied during the system's off-peak consumption season, the amount of which shall be determined monthly by dividing the then outstanding balance of the collected surcharge by the number of months remaining in the off-peak season. For purposes of this definition, the term season shall mean the authority's six-month billing period October through March or April through September.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 453.

PUBLIC RECORDS

453.1 Public records

453.2 Procedures

§ 453.1 Public records

(a) The public records of the Power Authority of the State of New York, which are required to be made available under article 6 of the New York Public Officers Law, shall be available for inspection and copying upon written request, reasonably describing the record or records sought, during the times provided in this Part at the authority's office at 123 Main Street, 15th Floor, White Plains, NY 10601.

§ 453.2 Procedures

(a) A request for inspection or copying of a public record of the authority shall be made to the secretary of the authority in writing, and shall contain sufficient information to identify the particular record sought, including, if possible, information regarding the date, file designation or other information describing the record sought. Any request shall be made either:

(1) in person during regular business hours at the authority's office at 123 Main Street, 15th Floor, White Plains, NY 10601; or

(2) by mailing such request, postage prepaid, to the Secretary, Power Authority of the State of New York, at the aforesaid address.

(b) (1) Upon receipt of a written request for a record reasonably described, the secretary shall promptly determine whether or not the record requested is required to be made available under the provisions of article 6 of the New York Public Officers Law and will, within five business days of the receipt of such request, either:

(i) make such record available to the person requesting it by notifying such person where and when the record may be inspected and copied;

(ii) deny such request in writing; or

(iii) furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with the procedure prescribed in section 89(5) of the New York Public Officers Law regarding trade secrets.

(2) If access to records is neither granted nor denied within 10 business days after

the date of acknowledgment of receipt of request, the request may be construed as a denial of access that may be appealed.

(c) Trade secrets. (1) Records or portions of records constituting trade secrets shall be so designated by the authority and shall be filed or maintained in secure facilities of the authority to which access is limited. Records or portions of records constituting trade secrets shall be made available for inspection and study to the trustees, the president, counsel, the officers and department heads of the authority and their designees.

(2) A person acting pursuant to law or regulation who, on or after January 1, 1982, submits any record to the authority may, at the time of submission, request that the authority, in accordance with the provisions of section 89(5) of the New York Public Officers Law, designate such record or any portion thereof as a trade secret and except such information from public disclosure under section 87(d)(2) of such law. Any such request shall identify in writing the record or part thereof alleged to be a trade secret and state reasons why such record or portion thereof should be excepted from public disclosure. Within 15 business days of receipt of a written request for an exception, the authority will either grant or deny such request in writing.

(d) (1) Records required to be made available for public inspection will be photocopied by the authority if practicable and the person requesting a copy will be charged a fee of \$.25 per page for copies not exceeding 9 x 14 inches, or the actual cost of reproducing such records if larger copies are required. If it is not practicable for the authority to photocopy any such record, it will be copied commercially and the person requesting the copy will be charged a fee equal to the cost of such commercial reproduction.

(2) Upon payment of, or offer to pay, the fee determined by the authority for copying a record required to be made available for public inspection, the authority will provide a copy of such record and the secretary will certify to the correctness of such copy if so requested in writing, or, as the case may be, shall certify that the authority does not have possession of such record or that such record cannot be found after diligent search.

(3) Any fee charged by the authority pursuant to this Part shall be paid by the person making the request in cash, certified check or bank cashier's check, in advance of the delivery of copies of any record referred to in this Part.

(e) Any person who is denied access to a public record of the authority by the secretary of the authority may, within 30 days of such denial, file an appeal from such denial with the authority's general counsel. Appeals pursuant to this subdivision shall be decided by the general counsel. If an appeal is denied, the reasons therefor shall be explained fully in writing to the person requesting the record within 10 business days of the date on which such appeal is received by the general counsel. The general counsel will forward to the Committee on Open Government a copy of such appeal and the determination thereon.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 454.

POWER SERVICE

- 454.1 Definitions
- 454.2 Sale of authority power
- 454.3 Liability, limitations and conditions of service
- 454.4 Metering
- 454.5 Cooperation of contracting parties
- 454.6 Billings and payments
- 454.7 Cancellation for violation by customer
- 454.8 Waivers
- 454.9 Notices
- 454.10 Transfer of interest in contract by customer
- 454.11 Resale of electric power and energy
- 454.12 Modification or merger of rates

§ 454.1 Definitions

The following definitions shall apply for all the purposes of this Part and of the service tariff and applications for electric service pertaining thereto:

- (a) Authority is Power Authority of the State of New York.
- (b) Customer is an individual, firm, partnership, corporation, association, rural electric cooperative corporation, municipality, or governmental body receiving electric service from authority.
- (c) Electric service is availability of any type of power and energy for customer in accordance with this Part, accepted applications for electric service, applicable service tariffs and other contract documents.
- (d) Application for electric service is a written request for the furnishing of electric service to customers by authority on a form prescribed by authority.
- (e) Service tariff is a schedule establishing rates and other conditions for sale of electric service.
- (f) Firm power and energy are power and associated energy which are intended to be available at all times except for limitations provided in this Part, in a service tariff, in an accepted application for electric service, or other contract documents.
- (g) Peaking power and energy are firm power and energy intended for use primarily in customer's peak load periods and limited as to the energy to be supplied.
- (h) Firm storage power and energy are power and associated energy produced with water stored in an authority pumped-storage facility or power and energy supplied in

lieu thereof, to be available as provided in a service tariff, or other contract documents.

(i) Nonfirm storage power and energy are power and associated energy produced with water stored in an authority pumped-storage facility of intermittent or temporary availability the supply of which will be limited as provided in a service tariff or in other contract documents.

(j) Pumping power and energy are power and associated energy supplied by customer or by authority for use in pumping water into an authority pumped-storage facility.

(k) Interruptible hydro power and energy are power and associated energy from authority's St. Lawrence or Niagara project which are normally available continuously for substantial periods of time but subject to interruption for extended periods because of decreased water flow.

(l) Replacement power is Niagara project firm power made available by authority to Niagara Mohawk Power Corporation pursuant to Public Law 85-159 to replace power formerly produced by Niagara Mohawk Power Corporation in its Adams and Schoelkopf plants, sales of which are subject to approval by authority.

(m) Expansion power is firm power supplied from the Niagara project or substituted from other sources to utility customers for resale to industrial consumers which authority shall individually designate for use in the expansion of their operations, the amounts of each allocation to such consumers to be determined by authority.

(n) Priority customers are (1) exempt persons as defined in 26 U.S.C. 103(c)(3), and (2) entities entitled to preference under 16 U.S.C. 836 (b)(1). High load factor manufacturers as defined in subdivision (o) of this section are priority customers to the extent provided in sections 1001 and 1005 of the Power Authority Act as amended (title 1, article 5 of the Public Authorities Law).

(o) High load factor manufacturer is an industrial establishment which normally utilizes a minimum electric demand of 5,000 kilowatts and which will normally utilize energy at the rate of approximately 540 kilowatt-hours per month for each kilowatt of demand and of which the cost of electricity normally represents at least 7 1/2 percent of its total product value.

(p) Billing period shall be the calendar month except as otherwise specified in a service tariff or other contract document.

(q) Contract demand is the maximum amount of power which authority is obligated to supply under an accepted application for electric service or service tariff or other contract document.

(r) System capability is capacity available to authority from its own generating sources and from firm power purchases from others.

(s) Unsupported firm power and energy are power and associated energy normally supplied only to customers operating electric utility distribution systems, the customer to be responsible for providing substitute power and energy in the event of interruptions or reduction in authority supply.

(t) Withdrawable power and energy are power and associated energy not currently required for service to priority customers and subject to withdrawal for such service.

(u) Supporting energy is energy purchased by authority for use when it is unable to meet contractual commitments because of lack of availability of necessary power and energy from its system capability.

(v) Reserve power is that part of the authority's system capability which is reserved from sale for the purpose of assuring authority's ability to meet its contractual commitments for firm power and energy in conjunction with interconnected utility systems as contemplated by 26 U.S.C. 103(c)(3).

(w) Reserve energy is energy associated with reserve power and normally sold on an immediately withdrawable basis to utilities which contract to provide supporting energy to authority.

(x) Residual power and energy are power and associated energy available on a temporary basis from authority generating sources or purchases in excess of authority requirements.

§ 454.2 Sale of authority power

(a) Applications for authority power. Applications for authority power pursuant to an appropriate service tariff or other contract document will be entertained by authority at any time, and insofar as they meet the qualifications established for the class of power to be marketed, will be considered individually as received, provided that authority may consider two or more applications at one time without reference to order of application.

(b) Process and approval of applications. Applications are subject to public hearings and other procedural requirements pursuant to section 1009 of the Public Authorities Law, as amended from time to time.

(c) Power in excess of contractual requirements. Power and energy in excess of authority's contractual requirements and not needed for any other authority purposes will be made available to authority customers from time to time under the provisions of applicable service tariffs or other contract documents.

§ 454.3 Liability, limitations and conditions of service

(a) Authority will endeavor at all times to provide a regular and uninterrupted supply of service, or such other character of service as specified in the application for electric service, the applicable service tariff, or other contract documents, but in case the supply of service shall be interrupted, or irregular or defective or fail from interruptions or reductions as such terms are described in subdivisions (b) and (c) of this section, or through ordinary negligence of employees, servants or agents, authority will not be liable therefor.

(b) Continuity of electric service to be furnished. (1) The electric service, except as otherwise specified in the application for electric service, the applicable service tariff

or other contract documents will be furnished continuously except:

(i) for interruptions or reductions due to uncontrollable forces, as defined in this section;

(ii) for temporary interruptions or reductions which, in the opinion of the authority, are required for power system protection or for providing temporary emergency assistance to interconnecting systems; and

(iii) for temporary interruptions or reductions, which, in the opinion of authority, are necessary or desirable for the purpose of maintenance, repairs, replacements, installation of equipment, or investigation and inspection.

Authority, except in case of emergency as determined by it, will give the customer reasonable advance notice of such temporary interruptions or reductions and will exercise due diligence to remove the cause thereof.

(2) The authority operates its generating and transmission facilities as a system and to the extent it determines feasible will utilize power and energy produced at any of its generating plants or purchased from others to satisfy its obligations to any of its customers. This provision shall not be construed to require the authority to utilize such power and energy referred to in the preceding sentence to avoid interruptions of service of the types referred to in paragraph (1) of this subdivision unless the customer agrees to pay the difference between the rate charged for the power and energy interrupted and the rate charged by authority for the charges incurred by authority, including any transmission.

(c) Uncontrollable forces. Neither customer nor authority shall be considered to be in default in respect to any obligation under any accepted application for electric service, service tariff, or other contract document, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term being deemed to mean any cause beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, strike and sabotage or restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. The party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

(d) Service beyond authority obligation. Customer may from time to time, in the absence of objection by authority, take power under any service tariff or other contract document at rates of power delivery greater than the contract demand in effect for such service or take energy in amounts greater than the amounts which authority is obligated to supply, but such greater takings shall not be deemed to establish in customer any right thereto and customer shall cease such greater takings whenever and for the periods of time requested by authority.

(e) Transmission by authority over the facilities of others. Where authority transmits power and energy to customer over the facilities of others, the obligation of authority to furnish the power and energy shall be subject to and contingent on the existence of an arrangement granting authority the right to use such facilities. The power and energy will be provided at the voltage available and under the conditions which exist from time to time on the system or systems over whose facilities the power and

energy are transmitted. The points on the customer's system to which the power and energy are to be transmitted shall be agreed upon by customer and authority. Authority will endeavor to inform customer from time to time of any significant changes contemplated on a system over which transmission is made if not authority's, and the added costs to customer resulting from such changes, but the costs of any changes made necessary in customer's system because of changes or conditions on such system shall not be a charge against or a liability of authority, provided, that if customer, because of changes or conditions on a system over which transmission is made if not authority's, is subjected to the necessity of making changes on its system at its own expense in order to continue receiving service, or if the electric service requirements of customer, to the extent that authority is obligated or determines that it can become obligated to furnish such requirements, are not being met, or if authority advises customer that such requirements cannot be met, because of an insufficiency of transmission capacity available to authority under its transmission arrangement in the facilities of others over which power and energy are supplied, then customer may terminate service as provided in the applicable service tariff or other contract documents.

(f) Delivery and service over the facilities of others. Where delivery of power and energy (as distinguished from transmission) is carried out through the systems of others, the utility which makes delivery will receive the power and energy from the authority at connecting points agreed upon by authority and the utility. The utility will use its system to make delivery in the same manner it uses such system to make delivery to its own customers. It will also provide service in connection with such delivery as mutually agreed upon by the utility and the authority. The obligation of authority to furnish power and energy shall be subject to and contingent on the existence of an arrangement between authority and the utility. The power and energy will be provided to customer at the voltage available and under the conditions which exist from time to time on the system from whose facilities the power and energy are delivered. Authority will endeavor to inform customer from time to time of any significant changes contemplated on the system from which delivery is made, but the costs of any changes made necessary in customer's system, because of changes or conditions on that system, shall not be a charge against or a liability of authority. However, if changes are necessitated in the utility's system for the benefit of the authority's customers, it will be done at the customer's expense or a compensating increase in the rate charged by the utility for delivery, and service will be made as provided for under the terms of authority's agreement with the utility providing delivery and service. If customer, because of changes or conditions in the system from which delivery is made, is subjected to the necessity of making changes in its facilities at its own expense in order to continue receiving delivery and service, or if the electric service requirements of customer to the extent that authority is obligated, or determines that it can become obligated to furnish such requirements are not being met, or if authority advised customer that such requirements cannot be met because of an insufficiency of system capacity of the utility providing delivery and service to authority under its arrangement with the utility, then customer may terminate or obtain modification of its agreement with authority.

(g) Applicable laws, licenses and directives. All applicable provisions of licenses, permits, approvals or orders issued to the authority by any State or Federal agency and all applicable provisions of Federal and State statutes, including Federal Power Act, Atomic Energy Act, National Environmental Policy Act, Federal Water Pollution Control Act and Power Authority Act of the State of New York (title 1 of article 5 of

the Public Authorities Law, chapter 772 of the Laws of 1931), all as amended shall be deemed to be incorporated in and made a part of this Part.

§ 454.4 Metering

(a) Transmission metering. Unless otherwise specified in the applicable service tariff or other contract documents, the total electric power and energy delivered to customer will be measured alone or in conjunction with deliveries to others by metering equipment to be furnished and maintained by authority. The meter or meters shall be sealed and the seals shall be broken only upon occasions when the meters are to be inspected, tested or adjusted, and representatives of customer shall be afforded reasonable opportunity to be present upon such occasions. The meter or meters shall be tested at least once each year by authority and at any reasonable time upon request therefor by either authority or customer. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. Should any meter fail to register, the electric power and energy delivered during the period of failure to register shall, for billing purposes, be estimated by authority from the best information available.

(b) Delivery and service metering. (1) Where delivery and service (as distinguished from transmission) are carried out through the systems of others and by the personnel of others, the total electric power and energy, including reactive power and energy where authority deems appropriate, transmitted or delivered to a customer (as distinguished from transmitted over the facilities of others) will be measured by metering equipment and measuring devices to be furnished and maintained by either authority or the utility providing delivery and service. Seals on meters, meter equipment and associated equipment shall be broken only upon occasions when the meters and measuring devices are to be inspected, tested, or adjusted. No person, except a duly authorized and identified representative of authority or the utility providing delivery and service, shall be permitted to break or replace a seal or to alter or change a meter or its connections or location, except when wiring changes are being made by customer following receipt of appropriate specifications of authority or the utility providing delivery and service as to service supply. In such case, a qualified electrician may break the meter seal and remove and remount a meter when authorized to do so by authority and/or by the utility providing delivery and service, whichever seals such meter. Meters owned by the authority or the utility providing delivery and service shall be tested by authority or such utility providing delivery and service as mutually determined by them.

(2) Should any meter fail to register for any period of time, or if the actual power and energy usage cannot be measured because of inability to read a meter or other measuring device, the electric power and energy delivered during such period shall, for billing purposes, be estimated by authority from the best information available, and customer billed accordingly.

(3) Except as provided in this section, customer shall not permit access by anyone, except authorized representatives of authority or the utility providing delivery and service, to the meter equipment or any other property of authority or the utility providing delivery and service, and shall not interfere or permit interference with such equipment. Customer shall be responsible for their safekeeping on his premises. Duly authorized representatives of authority and the utility providing delivery and service shall have the right to access to the premises of customer and

to all appropriate property of authority or the utility providing delivery and service to all reasonable times for the purpose of reading and testing meters, inspecting equipment used in connection with its service, repairing, readjusting, or replacing defective or inaccurate meters, metering the demand, ascertaining and counting the connected load of customer's installation, removing its property, or any other purpose.

(c) Meters errors. If any of the meter tests provided for in this section discloses that the error of any meter or meters exceeds two percent correction based upon the inaccuracy found shall be made of the records of electric service furnished since the beginning of the monthly billing period immediately preceding the billing period during which the test was made; provided, that no correction shall be made for a longer period than such inaccuracy may be determined by authority to have existed. Any correction in billing resulting from such correction in meter records shall be made in the next monthly bill rendered by authority to customer, and such correction when made shall constitute full adjustment of any claim between customer and authority arising out of such inaccuracy of meters.

§ 454.5 Cooperation of contracting parties

(a) Mutual assistance. If, in the maintenance of their respective power systems and/or electrical equipment and the utilization thereof for the purposes of the service provided by authority, it becomes necessary by reason of any emergency or extraordinary condition for either authority or customer to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, together with an amount not to exceed 10 percent of such costs for administration and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Nothing in this subdivision shall be construed to require the furnishing of personnel in the case of a strike, lockout or other labor dispute.

(b) License to the customer. Authority by acceptance of an application for electric service or as provided in other contract documents will grant customer a license to construct, install, operate, maintain, replace or repair, either or all, upon property of authority at locations designated by authority under the administrative control and jurisdiction of authority such facilities as in the opinion of authority are necessary or desirable for the purposes of the service authority is to provide customer. Such license shall remain in effect during the term of service and shall expire coincidentally therewith. Any facilities so installed by customer pursuant to this subdivision shall be and remain the property of customer notwithstanding that the same may have been affixed to the premises. Unless otherwise specified in the application for electric service, the applicable service tariff, or other contract documents, if upon expiration of the license authority desires to acquire such facilities, it may do so at a price equal to the original cost less depreciation provided it gives written notice within 20 days of its intention to so acquire such property. If the authority does not acquire such facilities customer shall have a reasonable time after the expiration of such license or licenses in which to remove its facilities so installed.

(c) License to the authority. Customer upon authority's acceptance of customer's application for electric service or as provided in other contract documents will grant to authority a license to construct, install, operate, maintain, replace or repair, either or all, upon the property of customer such facilities as in the opinion of authority or the utility providing delivery and service are necessary or desirable for the service authority is to provide customer. The license or licenses shall be and remain in effect during the term of service, and shall expire coincidentally therewith. Any facilities so installed by authority pursuant to such license or licenses shall be and remain the property of authority, notwithstanding that the same may have been affixed to the premises. Unless otherwise specified in the application for electric service, the applicable service tariff, or other contract documents, if upon expiration of the license customer desires to acquire such facilities, it may do so at a price equal to the original cost less depreciation provided it gives written notice within 20 days of its intention to so acquire such property. If the customer does not acquire such facilities authority shall have a reasonable time after the expiration of such license in which to remove its facilities so installed.

§ 454.6 Billings and payments

(a) Billings. Except as otherwise provided in the accepted application for electric service, the applicable service tariff or other contract documents, authority will submit bills to customer on or before the 10th business day of each billing period for electric service furnished during the preceding billing period, and payments will be due and payable by customer on the first day of the billing period immediately succeeding the date each bill is submitted. For the purposes of the preceding sentence, the term "business day" shall mean a day other than a Saturday, Sunday, or banking holiday in the State of New York.

(b) Nonpayment of bills. Except as otherwise provided in the accepted application for electric service the applicable service tariff or other contract documents if customer fails to pay any bill when due an interest charge of two percent of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full. Authority shall have the right upon not less than 15 days' advance written notice to discontinue furnishing electric service to customer for nonpayment of bills and to refuse to resume same so long as any part of the amount due remains unpaid. In the case of contracts with electric corporations entered into on or after May 1, 1974, failure to make prompt and timely payments of all bills rendered by authority for electric service shall be grounds for immediate termination pursuant to §1005(e) of the Public Authorities Law. Such discontinuance of electric service will not relieve customer of liability for any minimum charge during the time electric service is so discontinued. The rights given in this subdivision to authority shall be in addition to all other remedies available to authority, either at law or in equity, for the breach of any of the provisions of this subdivision.

(c) Adjustment for fractional billing period. For a fractional part of a billing period at the beginning or end of service, and for fractional periods due to withdrawals or other changes in the agreed upon amount of service the demand or capacity charge and the portion of the minimum charge based on demand or capacity or minimum amount of energy to be billed shall each be proportionately adjusted in the ratio that

the number of hours that electric service is furnished to customer in such fractional billing period bears to the total number of hours in the billing period involved.

(d) Adjustments for curtailment (interruptions or reductions) of service. (1) Unless otherwise specified in the applicable service tariff or application for electric service or other contract documents, if for the reasons specified in subdivisions (a) and (b) of section 454.3 of this Part conditions on the power system of authority (which system, for purpose of adjustments hereunder, shall include transmission and delivery facilities, if any, utilized but not owned by authority) require the delivery of electric service to be interrupted or reduced below the contract demand or other maximum rate of delivery in effect for the affected type of service, or below the rate of delivery required by customer at the time of such reduction, whichever is the lesser, for a period or periods of one hour or longer in duration, each customer shall receive a credit against the capacity charge and the minimum charge for the billing period representing a fraction of the total capacity charge and of the minimum charge determined by the ratio of (i) the sum of the hours in which the rate of delivery was reduced to zero plus the total of the fractional hours of partially reduced service (the fraction for each hour being the ratio of the reduction in rate of delivery below that scheduled by customer to customer's contract demand) to (ii) the number of hours in the billing period.

(2) Customer shall be limited in its remedy for such interruptions or reductions to the relief granted by this subdivision.

§ 454.7 Cancellation for violation by customer

Authority may cancel and terminate service under any service tariff upon violation of the terms of service as set forth in this Part, in the service tariff, in the accepted application for electric service, or in other contract documents, provided, that authority shall not exercise its option to cancel unless written notice and statement of any violation shall have been given customer and customer afforded a period of at least 60 days in which to cure such violation.

§ 454.8 Waivers

Any waiver at any time by either customer or authority of its rights with respect to a default or any other matter arising in connection with service to customer shall not be deemed to be a waiver with respect to any subsequent default or matter.

§ 454.9 Notices

Except where otherwise specifically provided, any notice, demand or request required or authorized by this Part, by the applicable service tariff or by the accepted application for electric service shall be deemed properly given if mailed by certified mail, postage prepaid to office of secretary of authority at the address of authority, and to the official signing for customer at the address of customer shown on the application for electric service or other contract document unless another person has been designated to receive such notice, demand or request. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

§ 454.10 Transfer of interest in contract by customer

No voluntary transfer of service by customer or of the rights of customer under its accepted application for electric service or other contract document shall be made without the written approval of authority, provided, that any successor to or assignee of the rights of the customer, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Part, the applicable service tariff or other contractual arrangements between customer and authority to the same extent as though such successor or assignee were the original customer, and provided further, that the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfer within the meaning of this section.

§ 454.11 Resale of electric power and energy

Unless otherwise provided in the applicable service tariff, or other contract documents, customer shall not sell any of the electric power and energy delivered to it under this Part, except to such purchaser(s) and upon such terms and at such rates as the authority shall approve.

§ 454.12 Modification or merger of rates

The rates provided for in each service tariff or other contract documents shall be subject to modification from time to time by the authority pursuant to the provisions of the Power Authority Act or any other applicable statutes. The authority may merge rates for power and energy made available from some or all of its facilities.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 455.

ADMINISTRATIVE PROCEDURES

455.1 Notice of proposed action

455.2 Notice of adoption

§ 455.1 Notice of proposed action

(a) Except as provided in subdivision (d) of this section, whenever the authority proposes to undertake any of the following actions, notice shall be given as provided in subdivisions (b) and (c) of this section:

(1) amendment of any rate schedule or tariff for the sale of power and/or energy;

(2) approval of the rates and general conditions of service pursuant to which power and/or energy are sold by any municipal or cooperative customer of the authority; and

(3) adoption, amendment, suspension or repeal of any rule or regulation of the authority, other than those relating to internal management, which do not directly and significantly affect the rights of, or procedures or practices available to, the public.

(b) At least 45 days prior to the adoption of any action included in subdivision (a) of this section, or prior to any hearing thereon, the secretary shall:

(1) caused to have published notice of the proposed action or hearing in the State Register in accordance with subdivision (c) of this section and, when appropriate in the judgment of the authority, publish notice of the proposed action in such newspaper or newspapers of general circulation as the authority may select;

(2) provide notification to any person or agency which has filed a written request, such request to be renewed yearly in December, for notice of proposed action or hearing which may affect that person or agency, by mail to the last address specified by the person or agency; and

(3) make available to the public a copy of the complete text of the proposed action, of the regulatory impact statement, and where applicable, the regulatory flexibility analysis.

(c) Notice to be published in the State Register shall:

(1) cite the statutory authority under which the authority proposes to take action;

(2) give the date, time and place of any public hearing and state whether such place is reasonably accessible to persons with a mobility impairment;

(3) include a statement that interpreter services shall be made available to deaf persons, at no charge, upon written request;

(4) either state the express terms of the proposed action, or describe the subject, purpose and substance of the proposed action;

(5) include a regulatory impact statement, and where applicable, a regulatory flexibility analysis or a summary thereof;

(6) give the name, public office address and telephone number of the secretary from whom the express terms of the proposed action and information about any public hearing may be obtained and to whom written data, views and arguments may be submitted; and

(7) include any additional matter required by statute.

(d) Subdivisions (b) and (c) of this section shall not apply to any action taken in conformance with subdivision 7 of section 1010 of the Power Authority Act.

(e) If the authority finds that immediate adoption of an action is necessary for the preservation of the public health, safety or general welfare, it may adopt the action on an emergency basis. As soon as practicable thereafter, the secretary shall file with the Secretary of State notice of emergency adoption which shall state whether such notice also constitutes notice of proposed action and which includes all of the matters required by the statute. Not more than 60 days after such filing, the authority may either reconsider the action in accordance with subdivisions (b) and (c) of this section and file notice of adoption in accordance with section 455.2 of this Part or readopt such action on an emergency basis.

§ 455.2 Notice of adoption

Upon completion of any action listed in subdivision (a) of section 455.1 of this Part, the secretary shall file a copy of such action with the Secretary of State, together with an appropriate certificate, and submit a notice of adoption to be published in the State Register. The secretary shall at the same time transmit a copy of the notice of adoption, including the complete text of the action to the Governor, the Temporary President of the Senate, the Speaker of the Assembly, the Administrative Regulations Review Commission, and the Office of Business Permits and Regulatory Assistance. Such notice shall:

(a) cite the statutory authority under which the action was taken;

(b) state the express terms or describe the subject, purpose and substance of such action;

(c) state whether there have been any substantive changes reflected by the final action in comparison with the proposed action and identify such changes;

(d) give the anticipated effective date of the action;

(e) include an assessment of public comment;

(f) give the name, public office address and telephone number of the secretary from whom the express terms of the final action and any revised regulatory impact statement or regulatory flexibility analysis may be obtained; and

(g) include any additional matter required by statute.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 456.

DECLARATORY RULINGS

- 456.1 Declaratory rulings
- 456.2 Procedures

§ 456.1 Declaratory rulings

Any person may petition the Power Authority for a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by the Power Authority, or whether any action taken by it should be taken pursuant to a rule.

§ 456.2 Procedures

(a) Requests for declaratory rulings shall be made to the general counsel of the authority upon a form prescribed by the authority which shall contain sufficient information to identify with particularity the person, the property or the state of facts and the rule or statute enforceable by the authority, the applicability of which is sought to be determined or shall identify with particularity the action, with respect to which the declaratory ruling is sought.

(b) Such request may be accompanied by a memorandum in support setting forth the reasons for the request. Requests pursuant to this subdivision shall be granted or denied by the general counsel, within 30 days of the date on which such request is received in proper form by the general counsel, provided that in the case of a request for a declaratory ruling with respect to whether an action by the authority should be taken pursuant to a rule, the request shall be granted or denied by the general counsel within 60 days of such date.

(c) Request for a declaratory ruling. POWER AUTHORITY OF THE STATE OF NEW YORK 123 Main Street White Plains, New York 10601 Request for a Declaratory Ruling

Name _____ Business Phone _____

Representing

Address

Mailing Address (if different)

Ruling Requested (Specify with particularity which person, what property, or what state of facts and the rule or statute enforceable by the Authority, the applicability of which is sought to be determined, or identify with particularity the action with respect to which the declaratory ruling is sought):

(more 8-1/2 x 11 pages may be attached if required) Check the following space if a memorandum in support accompanies this request. _____

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 457.

LATE PAYMENT CHARGES--MUNICIPAL AND RURAL ELECTRIC COOPERATIVE SYSTEMS

- 457.1 Late payment charge policy
- 457.2 Rate schedules
- 457.3 Retail bills
- 457.4 Maximum rates
- 457.5 Pending complaint
- 457.6 Other charges

§ 457.1 Late payment charge policy

Any municipal or rural electric cooperative system in the State of New York which purchases power from the Power Authority may elect to impose a late payment charge, of a continuing interest type, because of the failure of any retail customer to pay a bill for electric service within a specified period therein stated.

§ 457.2 Rate schedules

If a late payment charge is imposed, the rate schedules shall show the rates for service, the monthly percentage charge for late payment and when the late payment charge becomes applicable.

§ 457.3 Retail bills

If any such municipal or cooperative system elects to impose a charge for late payment for electric service, it shall show on each bill the amount currently billed, the total amount due and any arrears and late payment charge, each separately stated, the amount of the monthly percentage charge for late payment and when such charge becomes applicable. In no event shall any late payment charge become applicable less than 20 days after the date payment was due. The date payment is due may not occur before personal service of the bill or three days after the mailing of the bill.

§ 457.4 Maximum rates

If a late payment charge is imposed, it shall not exceed 1-1/2 percent per month on the unpaid balance of any prior bill for service including interest thereon, less all amounts received or credited against such unpaid balance during the new billing period.

§ 457.5 Pending complaint

No late payment charge may be imposed by any municipal or rural electric cooperative system on any residential bill which is the subject of a pending complaint before the municipal or cooperative system, provided that such charge may be imposed retroactively if the complaint is finally resolved in favor of the municipal or cooperative system.

§ 457.6 Other charges

Except as provided elsewhere in this Part, no municipality or cooperative system may utilize "gross-net" billing for any customer or charge any customer a late payment charge, penalty, fee, interest, or other charge of any kind for any late payment, collection effort, service disconnection or deferred payment agreement occasioned by the customer's failure to pay timely for electric service.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 458.

MINIMUM INSULATION AND HEATING SYSTEM STANDARDS

- 458.1 Application
- 458.2 Minimum insulation and heating system standards for existing buildings or mobile homes converting to electric heat
- 458.3 Enforcement of compliance with construction standards of State Energy Conservation Construction Code

§ 458.1 Application

Any utility as hereinafter defined shall incorporate into its service rules and enforce the minimum insulation and heating system standards for existing dwellings, commercial buildings and mobile homes converting to electric heat as set forth in section 458.2 of this Part.

§ 458.2 Minimum insulation and heating system standards for existing buildings or mobile homes converting to electric heat

(a) Definitions. The following words and phrases as used in this Part shall have the following meanings, unless a different meaning is plainly required by the context:

(1) Building. A combination of any materials, whether portable or fixed, forming a structure in which energy usage takes place in the normal course, affording shelter for persons or property.

(2) Dwelling. A building other than a mobile home, designed or used as a living unit for one or more families.

(3) Living unit. A dwelling or portion thereof, providing complete living facilities for one family, including permanent provision for living, sleeping, eating, cooking and sanitation.

(4) Commercial building. Any building that cannot be classified as a dwelling or mobile home.

(5) Insulation. Any material which has a relatively high resistance to heat flow, and which is used principally to retard the flow of heat.

(6) Btuh. British thermal units per hour.

(7) Heat transmission. The amount of heat, measured in Btuh, transferred from one location to another location as a result of the temperature difference in the two locations.

(8) Coefficient of heat transmission. The amount of heat transfer through a material or arrangement of material expressed in Btuh per square foot per degree Fahrenheit temperature difference. For outside surfaces, the wind velocity is 15 miles per hour. The coefficient of heat transmission is represented by the symbol "U". For wood frame construction, the effect of normal framing members may be neglected in the determination of U values.

(9) Basement. A space of full-story height below the first floor of a building which is not designed or used primarily for living accommodations.

(10) Unheated basement. A basement in a dwelling which is not provided with a heat source sufficient to maintain a minimum temperature of 50 degrees F.

(11) Crawl space. Any unfinished, accessible space below the first floor which is less than full-story height.

(12) Unheated crawl space. A crawl space in a one- or two-family dwelling or multifamily dwelling which is not provided with a heat source sufficient to maintain a minimum temperature of 50 degrees F.

(13) Heated space. Any space within the building which is provided with a heat source sufficient to meet the design dry bulb temperature, but which is neither a heated basement nor heated crawl space as determined by application of the definitions in this section.

(14) Mobile home. This means a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling, with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

(15) Utility. A municipal electric or rural electric cooperative system which receives its full power requirements from the Power Authority.

(16) Power Authority. The Power Authority of the State of New York.

(17) Combined thermal transmittance. An overall coefficient of heat gain expressed in units or Btuh per square foot as calculated using Equation 1.

(18) System. A combination of central or terminal equipment or components and/or controls, accessories, interconnecting means, and terminal devices by which energy is transformed so as to perform a specific function, such as HVAC, service water heating or illumination.

(19) Automatic. Self-acting, operating by an internal mechanism when actuated by some impersonal influence, as for example, a change in current strength, pressure, temperature or mechanical configuration.

(20) Automatic setback thermostat. An automatic control device actuated by temperature and designed to be responsive to temperature capable of automatically reducing its set-point temperature during a predesignated period.

(21) Setback controller. An automatic control device capable of reducing the set-

point temperature of several thermostats during a predesignated period.

(22) Hydronic heating system. A heating system using primarily liquid or gaseous water to distribute heating energy throughout the building.

(23) Zone. A space or group of spaces within a building with heating and/or cooling requirements sufficiently similar so that comfort conditions can be maintained throughout by a single controlling device.

(24) Thermostatic control valve. An automatic control valve designed to be responsive to room air temperature.

(25) Energy audit. An engineering analysis which shall consider all possible energy conservation measures and shall identify the estimated costs and energy cost savings likely to be realized from their implementation.

(b) Standards for existing dwellings. Existing residential dwellings converting to electric heat shall meet the following requirements:

(1) Minimum insulation standards shall be as follows:

(i) The maximum coefficient of heat transmission, U-value, through roof and ceiling assemblies adjacent to heated space shall be as follows:

degree days	U-value	Heating
	5,000	0.05
	6,000	0.04
	7,000	0.04
	8,000	0.03
	9,000	0.03

The degree days to be used to determine the required U-value shall be those in Table 1.

(ii) The maximum coefficient of heat transmission of floors over an unheated basement shall be 0.08.

(iii) The dwelling shall have storm windows or thermal windows with multiple glazing with a maximum U-value of 0.69.

(iv) The entrances to the dwelling shall have storm doors or thermal doors with a maximum U-value of 0.40.

(v) Vapor barriers, weather-stripping and window caulking shall be used where applicable and practical.

(2) Minimum heating systems standards shall be as follows:

(i) For systems using baseboard radiation, one of the following control methods is required:

(a) A separate automatic setback thermostat shall be installed in each room (provided that no more than one such thermostat need be installed in any two-room living unit).

(b) A central setback controller connected to individual room thermostats shall be installed.

(ii) For the conversion from a fossil-fueled hydronic heating system to electric heat, the following is required:

(a) Conversion of an existing fossil-fuel boiler to an electric resistance boiler is prohibited.

(b) An electric boiler specifically designed for use as a heating boiler with the appropriate American Society of Mechanical Engineers (ASME) approvals shall be installed.

(c) One of the following control methods is required:

(1) a separate zone with an automatic setback thermostat for each floor, or for each living unit, if there is more than one living unit on a floor;

(2) thermostatic control valves be installed on each radiator and an automatic setback thermostat be installed for the boiler.

(iii) For the installation of an electric resistance warm air system or the conversion of a fossil-fueled warm air heating system to electric resistance heat, the following is required:

(a) A separate duct heater or furnace is provided for each floor, or for each living unit, if there is more than one living unit on a floor.

(b) For each duct heater or furnace, a separate automatic setback thermostat shall be required.

(iv) For heat pump systems, an automatic setback thermostat shall be required.

(v) For all electric heating system conversions, existing fireplaces shall be equipped with a tight-fitting shutoff damper. Where applicable, a source of combustion air ducted from the outdoors of sufficient quantity to support combustion shall be installed. This source shall be equipped with a damper capable of being fully closed.

(3) In unusual circumstances, when the application of these standards appears impracticable or inequitable, the utility or the applicant will refer the matter to the Power Authority for special ruling or for the approval of special conditions which may be mutually agreed upon.

(c) Standards for existing commercial buildings. Existing commercial buildings converting to electric heat shall meet the following requirements:

(1) Minimum insulation standards shall be as follows:

(i) The maximum combined thermal transmittance value for exterior wall systems, $U[o]$ as calculated using Equation 1 shall be as follows: Heating degree days $U[o]$

5,000 0.36

6,000	0.33
7,000	0.31
8,000	0.28
9,000	0.28

EXPLANATION: Matter in brackets [] is subscript material.

The degree days to be used to determine U[o] shall be those listed in Table 1.

(ii) The maximum coefficient of heat transmission, U-value, for roof and ceiling assemblies adjacent to heated space shall be as follows: Heating

degree days	U-value
5,000	0.08
6,000	0.08
7,000	0.07
8,000	0.06
9,000	0.06

The degree days to be used to determine U-value shall be those in Table 1.

(iii) The maximum coefficient of heat transmission of floors over an unheated basement shall be 0.08.

(iv) Vapor barriers, weather-stripping and window caulking shall be used where applicable and practical.

(2) Minimum heating system standards shall be as follows:

(i) The system shall have at least one independent zone per floor.

(ii) One of the following control methods is required:

(a) A separate automatic setback thermostat shall be installed for each zone.

(b) A central setback controller connected to individual zone thermostats shall be installed.

(iii) For the conversion from a fossil-fueled hydronic heating system to electric heat, the following is required:

(a) Conversion of an existing fossil-fuel boiler to an electric resistance boiler is prohibited.

(b) An electric boiler specifically designed for use as a heating boiler with the appropriate American Society of Mechanical Engineers (ASME) approvals shall be installed.

(iv) Where electric heating is to be used for zone temperature control in heating, ventilating and air conditioning (HVAC) systems, the following control methods are required:

(a) Reheat systems. Systems employing reheat and serving multiple zones (other than those employing variable air volume for temperature control) shall be provided

with controls that will automatically reset the system cold air supply to the highest temperature level that will satisfy the zone requiring the coolest air. Single-zone reheat systems shall be controlled to sequence reheat and cooling.

(b) Dual duct and multizone systems. These systems shall be provided with controls to reset the cold deck air supply to the highest temperature that will satisfy the zone requiring the coldest air and to reset the hot deck air supply to the lowest temperature that will satisfy the zone requiring the warmest air.

(3) In unusual circumstances, when the application of these provisions appears impractical or inequitable, the utility or applicant will refer the matter to the Power Authority for special ruling or for the approval of special conditions which may be mutually agreed upon. The applicant will submit, along with the request for special ruling or for the approval of special conditions, a copy of an energy audit performed on the building by a registered architect or professional engineer.

(d) Standards for mobile homes. Existing mobile homes converting to electric heat (built prior to the effective date of the Department of Housing and Urban Development (HUD) "Mobile Home Construction and Safety Standards"), shall meet the following requirements:

(1) glazing $U = 0.69$

(2) entrance doors $U = 0.40$

Unusual circumstances. In unusual circumstances when the application of these standards appears impracticable or inequitable, the utility or applicant will refer the matter to the Power Authority for special ruling or for the approval of special conditions which may be mutually agreed upon.

(e) Effective date. The standards specified herein shall be effective on and after September 1, 1981 as a precondition for the expansion of existing electric service for the purpose of providing electric heat to all existing buildings and to existing mobile homes not subject to HUD "Mobile Home Construction and Safety Standards".

(f) Relationship to other standards. The requirements imposed by these standards represent the minimum standards for existing buildings and mobile homes for which utilities may provide electric service. However, some utilities may require a greater degree of thermal protection than these standards impose. These standards, are not intended to supersede more stringent municipal requirements or standards nor are they intended in any way to contravene the State Energy Conservation Construction Code Act. The thermal protection for mobile homes is controlled by the Department of Housing and Urban Development "Mobile Home Construction and Safety Standards". In accordance with the Housing and Community Development Act of 1974, Title VI (cited as the National Mobile Home Construction and Safety Standards Act of 1974), the Federal standards take precedence over all State or local standards.

(g) Certificate of compliance. A form of certificate of compliance, included as Appendix 10-B of this Title, shall be provided to the builder or contractor when the builder/contractor first contacts the utility concerning electrical service for conversion to electric heat of existing buildings or of existing mobile homes covered by these standards. The applicable form shall be completed before the utility supplies

permanent new or expanded electric service. In addition, an inspection of the premises by an employee of the municipal electric department, building code enforcement inspector, or qualified representative of the municipal government is required to verify compliance with these standards. TABLE 1

HEATING DEGREE DAYS--NEW YORK STATE(For use in selecting required U-values)

Counties	Degree days	Counties	Degree days
Albany	7,000	Niagara	7,000
Allegany	7,000	Oneida	8,000
Bronx	5,000	Onondaga	7,000
Broome	7,000	Ontario	7,000
Cattaraugus	7,000	Orange	6,000
Cayuga	7,000	Orleans	7,000
Chautauqua	7,000	Oswego	7,000
Chemung	7,000	Otsego	8,000
Chenango	8,000	Putnam	6,000
Clinton	8,000	Queens	5,000
Columbia	7,000	Rensselaer	7,000
Cortland	8,000	Richmond	5,000
Delaware	7,000	Rockland	6,000
Dutchess	7,000	St. Lawrence	8,000
Erie	7,000	Saratoga	7,000
Essex	9,000	Schenectady	7,000
Franklin	8,000	Schoharie	7,000
Fulton	8,000	Schuyler	7,000
Genesee	7,000	Seneca	7,000
Greene	7,000	Steuben	7,000
Hamilton	9,000	Suffolk	6,000
Herkimer(Adirondack Park Boundary)	N.9,000 S.8,000	Sullivan	7,000
Jefferson	7,000	Tioga	7,000
Kings	5,000	Tompkins	7,000
Lewis	8,000	Ulster	7,000
Livingston	7,000	Warren	9,000
Madison	8,000	Washington	9,000
Monroe	7,000	Wayne	7,000
Montgomery	7,000	Westchester	6,000
Nassau	5,000	Wyoming	7,000
New York	5,000	Yates	6,000

EQUATION 1

$UO = UAW + UGAG + UDAD$. . .Ao Where: U_o = the average or combined transmittance of the gross exterior wall area in Btu/hr/sq ft/ degrees F. A_o = the gross exterior wall assembly area in square feet. U_w = the coefficient of heat transmission of the components of the opaque wall area in square feet. A_w = opaque wall area in square feet. U_g = the coefficient of heat transmission of the glazing area. The U_g of glazing shall be the average value of the window, including frames and glazing areas. A_g = glazing area (shall be the area of the finished opening), in square feet. U_d = the coefficient of heat transmission of the door, or similar opening. A_d = door area (shall be the area of the finished opening), in square feet.

Note: Where more than one type of wall, window or door is used, the U and A terms for those items shall be expanded into subelements as: $U_{w1} A_{w1} + U_{w2} A_{w2} + U_{w3} A_{w3} + \text{etc.}$

§ 458.3 Enforcement of compliance with construction standards of State Energy Conservation Construction Code

(a) Compliance with the State Energy Conservation Construction Code shall be a precondition for the provision, by any municipality or cooperative purchasing power from the Power Authority, of electric service to all new building construction, or to any addition, alteration or renovation of any existing building which materially changes its heating or cooling requirements, in any locality of the State which does not have a municipal building department or building permit process. A form of certificate of compliance, included as Appendix 10-C of this Title shall be provided to the builder or contractor when the builder/contractor first contacts the municipality or cooperative concerning electric service to any building or building improvement subject to the requirements of this section. The form shall be completed before the municipality or cooperative supplies electric service. In addition, an inspection of the premises by an employee of the municipal electric department, building code enforcement inspector or qualified representative of the municipal government is required to verify compliance with these standards.

(b) The State Energy Conservation Construction Code has been promulgated by the State Energy Office pursuant to article 11 of the Energy Law. The code applies to all new public and private buildings and construction of any addition, alteration or renovation of an existing building which materially increases the heating and/or cooling requirements of such a building. This code has been promulgated as regulations of the State Energy Office in 9 NYCRR Parts 7810 through 7815.

(c) Unusual circumstances. In unusual circumstances when the application of the requirements of this section appears impracticable or inequitable, the utility or the applicant will refer the matter to the Power Authority for special ruling or for the approval of special conditions which may be mutually agreed upon.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 459.

PROCEDURES FOR NOTICE OF DISCONTINUANCE OF ELECTRIC SERVICE

- 459.1 Application
- 459.2 Definitions
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- 459.11 Medical emergencies
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§ 459.1 Application

Any municipality or rural electric cooperative purchasing essentially all of its power requirements from the Power Authority of the State of New York shall incorporate into its service rules and enforce the procedures governing discontinuance of electric service as set forth in sections 459.2 through 459.14 of this Part.

§ 459.2 Definitions

The following words and phrases as used in this Part shall have the following meanings, unless a different meaning is plainly required by the context:

(a) Customer means a person, firm or corporation purchasing electric service from a municipality.

(b) Elderly means age 62 or older.

(c) Handicapped means having any physical or mental impairment which substantially limits one or more of such person's life activities, where such person is:

(1) certified as being physically disabled by a licensed physician; or

(2) certified as being mentally disabled by a licensed psychiatrist or registered psychologist.

(d) Utility means a municipal electric or rural electric cooperative system purchasing essentially all of its power requirements from the Power Authority of the State of

New York.

(e) Resident means any person residing in a dwelling served by the utility.

§ 459.3 Prior notice time requirement

(a) No utility shall discontinue service for failure to pay electric service bills rendered or for failure to post a required deposit until at least 35 days have elapsed from date payment was due. Additionally, such termination cannot occur until:

(1) at least 15 days after written notice has been served personally upon a customer or resident 18 years of age or older; or

(2) at least 15 days after the utility mails written notice by a registered or certified letter to the customer at the address at which service is received.

(b) If a customer has requested in writing to the utility to have an alternate address for billing purposes, the notice authorized under paragraph (a)(2) of this section shall be sent both to the alternate address and to the premises where service is received.

§ 459.4 Notice format

(a) Every notice indicating discontinuance of service for nonpayment of service bills rendered or for failure to post a required deposit shall clearly state in nontechnical language:

(1) the reason for service discontinuance;

(2) the total amount required to be paid by the customer to avoid

discontinuance of service, indicating the amount for which the customer's account is either in arrears or the required deposit, if any, which must be posted by the customer, or both;

(3) a method whereby the customer may tender payment of the full sum due and owing, including any required deposit or other mutually satisfactory arrangement, to avoid the discontinuance of service;

(4) the availability of utility procedures to consider customer complaints prior to discontinuance of service, including the address and phone number of the office of the utility which the customer may contact in reference to customer's account; and

(5) the earliest date on which discontinuance of service may be attempted.

(b) The following information in bold type is also to appear on the face of the disconnect notice: "THIS IS A FINAL DISCONNECT NOTICE. TO AVOID INCONVENIENCE, BRING THIS NOTICE TO THE ATTENTION OF THE UTILITY WHEN PAYING THIS BILL."

(c) Every notice shall include a statement advising customers that they should contact the utility's business office immediately if any acute hardship, such as death in the family, recent unemployment, serious illness or infirmity, or other grave condition exists, or if they are a recipient of financial assistance from a local social services department in order that such utility may prudently determine whether any temporary arrangement should be employed to avoid immediate termination.

(d) The utility shall permit a residential customer to designate, in writing, a third party to receive a copy of every notice of discontinuance of service to the customer, provided that such third party indicates in writing a willingness to receive such notices. The utility will provide notice to the third party based on the name and address submitted by the requesting customer. The utility shall not be responsible for any incorrectness in the name and address provided or for the failure of any customer to furnish timely and appropriately updated or revised information, nor for its unintentional failure to provide such third party notice. The utility will advise its residential customers annually of the procedure available to them to designate a third party to receive a copy of a notice of discontinuance. Unless liable by law as a guarantor or otherwise, the designated third party shall not be deemed financially responsible for the customer's bills.

§ 459.5 Two family dwellings

(a) The utility shall not discontinue electric service to a two family dwelling that it knows contains units where service is not metered separately unless the utility has given 15 days' written notice of its intention to terminate service as follows:

(1) a copy of such notice shall be mailed via registered or certified letter to the owner of the premises affected, or in lieu thereof, to the person, firm or corporation to whom or which the last preceding service bill has been rendered;

(2) a copy of such notice shall be mailed or otherwise delivered to each occupied unit; and

(3) where possible, a copy of such notice shall be posted in a conspicuous place at or within the dwelling.

(b) Such notices shall state the intended date of termination of service, the amount due for such service, and the procedure by which any occupant may make payment or take action to avoid termination of service, including:

(1) that any occupant may prevent termination of service if such occupant applies for and is eligible for such service; and

(2) that any occupant may prevent termination of service by making payments in accordance with established procedures. In no event shall such payments include bills more than two months in arrears. Any occupant who chooses to pay current charges shall not be liable for any future bills which may be rendered for utility service supplied to the dwelling. The utility shall continue to render all bills to the customer with a copy to be sent to any occupant upon request.

(c) When the obligations owed to the utility for service to a dwelling have been

satisfied, the utility shall notify an occupant of each dwelling which was given notice of intent to terminate service.

§ 459.6 Multiple unit dwelling

(a) The utility shall not discontinue service to an entire multiple unit dwelling (defined as containing three or more individual dwelling units) where the customer to whom the last preceding bill has been rendered, or from whom or which the utility has received payment therefor, has failed to pay such electric bills until 35 days have elapsed from the date payment was due. Additionally such termination cannot occur until the utility has complied with the following procedures:

(1) The utility must give 15 days' written notice of its intention to so discontinue by personally serving such notice on the owner of the premises affected or on the customer to whom the last preceding bill was rendered, or from whom or which the utility has received payment therefor, and on the superintendent or other person in charge of the building, if it can be readily ascertained that there is such superintendent or other person in charge.

(2) The utility must give 15 days' written notice by registered or certified letter to the owner or customer specified in paragraph (1) of this subdivision, if such notice is mailed to the address of such person(s), firm or corporation.

(3) In addition to the notice prescribed by paragraphs (1) and (2) of this subdivision, 15 days' written notice shall be posted in the public areas of such multiple dwelling; and 15 days' written notice shall be mailed to the occupant of each unit in that multiple dwelling and to the local health officer and director of the social services district for the political subdivision in which the multiple dwelling is located. Notice to health officers and directors of social services shall be repeated not more than four working days nor less than two working days prior to such discontinuance.

(4) Whenever a notice of intention to discontinue electric service has been made pursuant to the provisions of this section and obligations owed the utility have been satisfied, the utility shall, in the same manner as it gave such notice of intention, notify the occupant of each unit that the intention to discontinue electric service no longer exists.

(b) Notwithstanding the provision of subdivision (a) of this section, no utility shall discontinue services to a multiple dwelling, where the owner or customer responsible for making payment fails to pay utility bills, as long as occupants of such multiple dwellings continue to make timely payments for such service. All notices referred to in subdivision (a) of this section shall contain the intended date of discontinuance of service and the name and telephone number of a contact at the utility who will advise occupants of the amount due for electric service and who will arrange meetings with occupants to attempt to work out a mechanism for avoiding discontinuance of service in the event that the owner or customer continues to fail to make requisite payments or arrangements for such payments. The notice shall also refer to the provisions contained in subdivision (a) of section 235 of the New York Real Property Law authorizing occupants to set-off, against their rent, payments to utilities in such circumstances.

(c) A utility may not require occupants in a multiple dwelling electing to make payments as detailed in subdivision (b) of this section to pay more than the current electric charges incurred by the owner or customer, to whom or which the last preceding bill has been rendered or from whom or which the utility has received payment therefor. A current charge for purposes of this section means the amount properly billed the owner or customer, for electricity used during the most recent billing period covered by the first bill rendered on or after the date when the disconnect notice is issued. The current charges will not include any arrears for earlier billing periods that may appear on such a bill.

§ 459.7 Tampering and theft of services

(a) Except as provided for in section 459.9 of this Part, a utility may reserve the right to discontinue service to a customer in any and all cases in which the facts establish, with reasonable certainty, that the meter or service laterals, or any part of same, have been tampered with in any manner which affects the proper operations of the same or the registering on the meter of the full amount of electricity being consumed. In cases where tampering and/or theft of service has been established, the customer shall pay the following charges to the utility:

(1) the amount owed based upon the estimated consumption of electricity not recorded on the meter; and

(2) the damage to or any loss or destruction of the meter and other property of the utility. All damages will be based on current replacement cost.

(b) Where the utility has disconnected service, such service will not again be restored unless the customer pays the foregoing charges to the utility or agrees to make such payments under an installment plan.

§ 459.8 Days and hours during which service may be discontinued

(a) Electric service may be discontinued on Monday through Thursday during the regular business hours of the utility. Service may not be discontinued on, or immediately preceding, a day in which the office of the utility is not open for business or on a public holiday. The utility may refuse to resume electric service so long as any part of the amount due remains unpaid, unless other mutually satisfactory arrangements are made.

(b) A utility may not discontinue service for nonpayment of service bills rendered or failure to post a required deposit until it has taken reasonable steps to verify that payment was not received or posted to the customer's account up to the day that disconnection is to occur. Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance of service shall not constitute payment and no further notice need be issued prior to discontinuance.

(c) Such discontinuance of electric service will not relieve customer of liability for any minimum charge during the time electric service is so discontinued.

§ 459.9 Winter discontinuance procedures

(a) During the period November 1 to April 15, the following discontinuance procedures for nonpayment of service bills rendered, for failure to post a required deposit, or for tampering or for theft of services, are to be observed where electric service is necessary to heat, or to operate a heating system in a residence:

(1) In addition to the procedures set forth in sections 459.3 through 459.7 of this Part, the utility shall be required to make diligent efforts by telephone or in person to establish contact with the delinquent customer or a responsible resident adult (18 years or older) at the service address at least 72 hours prior to termination. At a minimum, attempts at personal contact shall include one attempt during normal working hours and in the event that personal contact is not achieved, at least one attempt during reasonable nonbusiness periods herein defined as:

Monday through Friday 6 p.m. to 9 p.m.

Saturdays, Sundays and Holidays 9 a.m. to 5 p.m.

If communication with the person contacted is not possible because of an apparent language barrier, the utility shall take reasonable steps to assure proper communication before discontinuance. During the contact, the utility's representative shall fully explain the reasons for discontinuance and shall attempt to ascertain whether a serious impairment to human health may result. If contact is made and in the judgment of the representative of the utility no impairment to human health would occur, service may be discontinued. If, however, in the judgment of the representative of the utility, discontinuance of electric service will lead to serious impairment of human health to any resident of the premises, the service shall not be discontinued.

(2) For the purpose of this Part, a serious impairment to human health is indicated if a customer or other resident appears to be seriously impaired and may, because of mental or physical problems, be unable to manage his own resources, carry out activities of daily living or protect himself from neglect or hazardous situations without assistance from others. Indicators of serious impairment to human health include, but are not limited to:

(i) age, infirmity or mental incapacitation;

(ii) use of life support systems, such as dialysis machines or iron lungs;

(iii) serious illness;

(iv) physical disability, including blindness and limited mobility;

(v) recent death in the family;

(vi) the presence of young children; and

(vii) any other factual circumstances which indicate severe or hazardous health situations.

The above criteria are general standards and the utility's representatives must exercise discretion, sound judgment and common sense in ascertaining whether a serious impairment to human health exists. Doubts should be resolved in favor of continued service.

(3) Information concerning the circumstances where it is found that discontinuance of service would lead to serious impairment to human health is to be documented and the account referred to the local social services commissioner. No utility shall terminate service for nonpayment where a customer or other resident exhibits an indication of a serious impairment to human health, as described in paragraph (a)(2) of this section, unless:

(i) the utility notifies the local social services commissioner orally, and within five days in writing, that the customer or other resident exhibits an indication of a serious impairment to human health; and

(ii) the local social services commissioner, after an investigation, informs the utility that the health-impairing condition does not exist or is not serious, or that an alternative means for protecting the person's health has been devised.

The utility may exercise its own discretion with respect to terminating service to the customer in the event it does not receive an oral or written report from the local social services commissioner within 15 business days after the written referral of the matter by the utility to the commissioner.

(4) If contact is not made after several good faith attempts, on the day termination of service is scheduled, a representative of the utility must visit the premises in order to determine whether there is continuing occupancy and whether a serious impairment to human health, as described in paragraph (a)(2) of this section, exists. If such an impairment is found to exist, or again no contact is made and there is reason to believe the premises has not been vacated, service shall not be discontinued and the account shall be immediately referred to the local social services commissioner. In all cases referred to the local social services commissioner, the utility shall request that the commissioner report back to the utility his findings and any required action. If the utility or the social services commissioner determines that no customer or other person residing in the premises faces impairment to his or her health, or that an alternative means for protecting the person's health has been devised, the utility may immediately discontinue the electric service.

(b) During the period September 1 to November 1 of each year, the utility shall review all cases where discontinuance of service occurred during the prior 12-month period where the electric service provided was necessary to heat a residence, or to operate a heating system therein, and where service has not been restored. A representative of the utility must, by telephone or in person, contact the delinquent customer or a responsible resident 18 years of age or older to determine if continued lack of service may expose the customer or other resident of the premises to a serious impairment to human health. If such determination is made, the customer shall be referred to the local social services commissioner.

§ 459.10 Special provision for the elderly and handicapped

(a) Where the utility knows, or reasonably should know, that all the residents of a household are elderly, handicapped, or 18 years of age or younger, procedures as set forth in subdivision (a) of section 459.9 of this Part shall be followed throughout the entire year.

(b) The utility annually may survey its customers to determine the applicability of this provision to each residential service address. The utility is not liable for the failure of any customer to furnish such information.

§ 459.11 Medical emergencies

Electric service to a residence shall not be terminated where a medical doctor or local board of health has certified in writing that termination of service will aggravate an existing medical emergency at a customer's residence, provided that an initial certification by telephone is authorized if written certification is received within the next five business days.

§ 459.12 Unsafe or hazardous conditions

In the event of special situations such as storms, cable breaks, accidents, or other cases involving emergency maintenance and unsafe or hazardous conditions, electric service may be temporarily terminated without prior notice.

§ 459.13 Reconnection

(a) Except in extreme and unusual circumstances or where a customer requests otherwise, the utility shall reconnect service to any disconnected residential customer not more than 24 hours after any of the following events:

(1) receipt by the utility of the full amount due and owing (including arrears, reconnection charges, collection charges, and, if applicable, a security deposit when requested in writing) for which service had been disconnected;

(2) agreement by the utility to a plan by which the customer is obliged to satisfy the arrears;

(3) receipt of a commitment of a direct payment or a written guarantee of payment from the local social services commissioner; or

(4) direction by the Power Authority of the State of New York.

(b) The direction to reconnect service under paragraph (a)(4) of this section will only occur when it reasonably appears, in exceptional circumstances, that there is legitimate dispute about an unpaid portion of the arrears claimed by a utility; where an apparent error in the disconnection of service has occurred, or where a serious impairment to human health or safety seems to exist. In circumstances where the customer makes acceptable arrangements for the payment of all amounts owed, the

customer will be informed that if he does not honor the agreement, the service will be disconnected and will not be reconnected until full payment is made of all amounts owing. In cases where the customer has a history of reconnecting his own service or of not honoring previous agreements, the utility may require that the customer make full payment of all amounts owing before service is restored.

§ 459.14 Installment plan

No utility shall terminate service unless the utility has first offered a monthly installment plan that is just and equitable. Each utility must offer a just and equitable monthly plan to all customers whose service has been disconnected for nonpayment. To the extent practicable, the monthly installment plan should be based on the customer's ability to pay, past payment history, the amount of indebtedness, and the availability of other resources. The monthly installment plan should require a customer to pay current bills and a portion of past indebtedness and may include a provision for payment of interest on the arrears. Such agreement may provide for a downpayment of the arrears provided that no such downpayment shall exceed one-half of the amount of the arrears or three months average billing, whichever is less. Such agreement may be renegotiated and amended where the customer can demonstrate that there have been significant changes in his or her financial circumstances which have arisen due to conditions beyond the customer's control.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 460.

PROCEDURES FOR ALLOCATION OF INDUSTRIAL POWER AND ENFORCEMENT OF CONTRACTS

- 460.1 Applications
- 460.2 Notification and advertisement of available industrial power
- 460.3 Application review
- 460.4 Job and usage requirements
- 460.5 Criteria for industrial power allocations
- 460.6 Temporary allocations of industrial power
- 460.7 Transfers of industrial power

§ 460.1 Applications

All entities requesting power for manufacturing or other industrial purposes shall be required to complete an application in a format prescribed by the authority. There shall be no priority attached to applications based on the date of receipt by the authority, provided that the authority may in appropriate circumstances require that applications be filed on or before a particular date.

(a) Direct application. Industrial firms may make direct application to the authority for any power available for industrial purposes, except that application for authority power available from public bodies shall be made in accordance with subdivision (b) of this section, and applications for economic development power, as defined in subparagraph (a) of the ninth unnumbered paragraph of section 1005 of the Public Authorities Law, shall be submitted to the Economic Development Power Allocation Board in accordance with its rules and regulations.

(b) Application by public bodies. Applications for industrial power which may be available for resale by a public body must be submitted by the public body on behalf of the industrial firm, except that applications by municipalities or municipal agencies for economic development power shall be made in accordance with the rules and regulations of the Economic Development Power Allocation Board.

(c) Recommendations to the authority by the New York State Economic Development Power Allocation Board. Recommendations to the authority by the Economic Development Power Allocation Board for allocations of economic development power, pursuant to sections 182 through 188 of the Economic Development Law as added by chapter 32 of the Laws of 1987, shall be reviewed by the authority in accordance with the applicable criteria set forth in this Part to the extent such criteria are not inconsistent with the applicable criteria set forth in said sections 182 through 188. With respect to any such recommendations, the authority shall review the application made to such board and such other information as the board may provide the authority. The authority may request such additional information from the applicant and/or the board that it deems necessary to act upon the board's recommendation.

§ 460.2 Notification and advertisement of available industrial power

When power, other than economic development power, becomes available for long-term allocation to industrial customers, pursuant to section 460.1(a) or (b) of this Part, or when the trustees determine that circumstances warrant a prospective allocation of such power on an "as available" basis, further applications for such power or for prospective allocation shall be solicited by public notice. Notice shall be in the form of newspaper advertisements, press releases and/or by such other means as the trustees find appropriate. Notices and advertisements shall make reference to the allocation criteria set forth in this Part. The New York State Department of Economic Development shall be contacted to assist in attracting suitable applicants from within and without the State. Specific notice of any available replacement power shall also be given to existing replacement power customers under the terms of the 1982 replacement power settlement agreement.

§ 460.3 Application review

The authority shall review each industrial power application made to the authority and it may request additional information from an applicant to assist in its review. After completion of a review and evaluation of the relative merits of all applications under consideration in accordance with the criteria set forth in this Part, the president will submit recommended allocations to the authority's trustees for their approval or disapproval.

§ 460.4 Job and usage requirements

All new allocations shall be specifically contingent upon commitments by the recipient to maintain specified levels of employment and power usage. A recipient's power allocation shall be subject to reduction if the specified employment and/or power usage levels are not maintained, provided that consideration will be given to short-term economic fluctuations and/or operational constraints (e.g., retooling, construction, rehabilitation of facilities). New allocations shall be subject to reporting requirements on a periodic basis with respect to power usage, employment levels and any agreed-upon affirmative action and minority- and women-owned business commitments. Reports shall be submitted in verified form either directly to the authority or, in the case of allocations by a public body, to the authority by the public body. All such job, usage and other commitments and reporting requirements shall be included in the agreement between the recipient and the authority or the public body, as the case may be, and shall be binding on the recipient during the term of the agreement. The authority shall be a third-party beneficiary of such contractual commitments between a recipient and a public body and shall have the right to seek enforcement thereof.

§ 460.5 Criteria for industrial power allocations

(a) Each application for an industrial power allocation shall be evaluated according to the following criteria:

- (1) compliance with any statutory, license or contractual criteria applicable to the particular type of power available;
- (2) subject to paragraph (1) of this subdivision, the amount of power requested shall be a minimum of 400 kW or, in the case of an allocation by a public body, such other lower minimum quantity as the authority may designate upon request by a public body;
- (3) the ratios of the number of permanent jobs to be created and of the number of permanent jobs to be retained to the amount of power requested;
- (4) the number of jobs (including construction jobs) to be created and the number of jobs to be retained as a result of a power allocation;
- (5) the types of jobs created, as measured by wage and benefit levels, security and stability of employment;
- (6) the effect the allocation will have on the business's existing employment at the location for which power has been requested;
- (7) anticipated additional payroll;
- (8) the business's willingness to satisfy affirmative action goals and to make jobs available to economically disadvantaged persons consistent with the authority's standard draft contract provision attached hereto as subdivision (c) of this section;
- (9) the impact on the operations of any other facilities of the business or on other businesses within the State of New York as a result of the allocation sought and the resulting effect on employment and relative competitive positions;
- (10) the cost of electricity as a percentage of cost of product(s) produced at the facility which will utilize the power;
- (11) the business's long-term commitment to New York State as evidenced by current or planned capital investment in business facilities in the State;
- (12) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed;
- (13) the time schedule for completion of the facility utilizing the power;
- (14) the extent to which a power allocation will affect the overall productivity and cost competitiveness of the business and its existing employment within the State;
- (15) the growth potential of the proposed facility and the contribution of economic strength to the area in which the business facility is or would be located;
- (16) the general economic conditions in the community in which the business facility is or will be located, and the extent to which a power allocation could contribute to the alleviation of any economic distress in the community;
- (17) the impact of an allocation on other electric ratepayers; and

(18) the extent to which an application is consistent with State, regional and local economic development strategies and priorities and is supported by local units of government in the area in which the business is located.

(b) Applications for industrial power to revitalize a business and retain jobs shall be evaluated by the following criteria, in addition to the criteria of subdivision (a) of this section:

(1) that the business is likely to close, reduce operations, or relocate out of state resulting in the loss of a substantial number of jobs without an allocation of power;

(2) that the business is an important employer in the community and efforts to revitalize the business are in the long-term interest of both employers and the community;

(3) that a reasonable prospect exists that the proposed power allocation will enable the business to remain competitive and become profitable and preserve jobs for a substantial period of time;

(4) that the business demonstrates cooperation with the local electricity distributor and other sources of assistance to reduce energy costs to the maximum extent practicable, through conservation and load management; and

(5) that the allocation will not unduly affect the cost of electric service to customers of the local electricity distributor.

(c) Proposed standard contract provision for industrial customers concerning affirmative action and minority- and women-owned business enterprise.

Customer as employer will not discriminate against employees or applicants for employment because of race, creed, religion, color, national origin, sex, age, disability or marital status and will undertake or continue existing programs of affirmative action to ensure that minority-group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation. Customer will also establish or continue procedures and guidelines to monitor and audit such affirmative action programs.

Customers will state in all solicitations or advertisements for employees placed by or on behalf of the Customer that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, religion, color, national origin, sex, age, disability or marital status. Whenever possible, Customer will endeavor to utilize minority news media for advertising employment opportunities and legal notices.

(Next paragraph to be included in contracts when Customer specifically commits to subcontractor jobs and/or relies on economic activity by subcontractors as a basis for a power allocation.) Customer shall establish programs or continue existing programs for the utilization of minority- and women-owned business enterprises.

Customer shall provide to the Authority, annually, a report in a form satisfactory to the Authority concerning the status of Customer's affirmative action program and

utilization of minority- and women-owned business enterprises for the facility receiving power from the Authority. Such reports shall include the following:

- (1) utilization analysis of work force at the facility receiving power; and
- (2) percentage utilization of and dollar value of contracts awarded to minority- and women-owned business enterprises; and

(Subparagraph (3) to be included in contracts when Customer specifically commits to subcontractor jobs and/or relies on economic activity by subcontractors as a basis for a power allocation.)

(3) Utilization analysis of work force of each subcontractor. Such reporting requirements may be satisfied by submission to the Authority of copies of Form EEO-1 or the equivalent, and/or such other reports or filings concerning Customer's affirmative action and minority- and women-owned business enterprise programs at the facility receiving power as are required to be prepared and filed with New York State or federal authorities pursuant to law or regulation. The Authority shall maintain the same degree of confidentiality accorded such reports as required of any federal or state agencies by applicable statutes. In no event shall such material be released without at least ten (10) days' written notice to the Customer. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Asian or Pacific Islander person having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or (d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification; and such ownership interest is real, substantial and continuing and have the authority to independently control the day-to-day business decisions of the entity for at least one year. Women-owned business enterprises shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day-to-day business decisions of the entity for at least one year.

§ 460.6 Temporary allocations of industrial power

Temporary allocations (i.e., allocations of temporarily available power which remain under contract with another entity or which are subject to termination or reduction when required for a new long-term contractual allocation) shall be considered strictly on a case-by-case basis and, while such allocations will be generally reviewed in accordance with the criteria concerning the allocation of power to industry set forth herein, they shall not be subject to the detailed notice requirements set forth in section 460.2 of this Part. Applicants for temporary allocations must satisfy at least one of the following criteria:

- (a) capital investment in plant modernization or expansion resulting in work force expansion or maintenance;
- (b) implementation of a freeze or cut in salaries/wages and/or benefits for management and employees; or
- (c) financial difficulties which seriously jeopardize the continued viability of a facility.

§ 460.7 Transfers of industrial power

Any transfer of an industrial power allocation between facilities of a customer or from one customer to a new customer shall be specifically subject to written authority approval, and in the case of economic development power, the written approval of the Economic Development Power Allocation Board. Consideration shall be given to the effect of any transfer on retention of employment and economic benefits to the State. The authority shall view any transfer (including transfers between a customer's facilities) which is accomplished without its approval as invalid and such transfer shall subject the customer to revocation of its allocation. In the case of replacement or expansion power, such approval shall be based on the authority's contracts with Niagara Mohawk Power Corporation and New York State Electric & Gas Corporation, as well as the service contracts between these utilities and the industrial customers involved.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 461.

IMPLEMENTATION OF THE STATE ENVIRONMENTAL QUALITY REVIEW ACT

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§ 461.1 Purpose

The Power Authority of the State of New York, generally known as the New York Power Authority, develops and supplies economic energy generation for the people of the State of New York in order to promote economic growth and the general welfare. In meeting these goals, the Power Authority seeks to balance environmental, energy, safety and economic needs of the people of the State of New York. The purpose of this Part is to establish additional procedures for the implementation of the State Environmental Quality Review Act (SEQRA) by the Power Authority in accordance with the authority contained in section 8-0113 of the Environmental Conservation Law (ECL).

§ 461.2 Severability

If any provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this part or the application thereof to other persons or circumstances.

§ 461.3 Definitions

- (a) Actions include:

(1) projects or physical activities, such as construction or other activities, which change the use or appearance of any natural resource or structure, which:

(i) are directly undertaken by an agency;

(ii) involve funding by an agency; or

(iii) require one or more permits from an agency or agencies;

(2) planning activities or an activity that commits the agency to a course of future decisions; and

(3) agency rules, regulations, procedures and policymaking. Note: Capital projects commonly consist of a set of activities or steps (i.e., planning, design, contracting, construction and operation). For purposes of this Part, the entire set of activities or steps can be considered an action. If it is determined that an environmental impact statement (EIS) is necessary, only one draft and one final EIS need be prepared on the action if the statements address each step at a level of detail sufficient for an adequate analysis of environmental effects. In the case of a project or activity involving funding or a permit from an agency, the entire project shall be considered an action, whether or not such funding or permit relates to the project as a whole or to a portion or component of it.

(b) Agency, unless otherwise noted, means a State or local agency.

(c) Applicant means any person making an application or other request to the Power Authority. An applicant does not include an officer or employee of the Power Authority acting in that capacity.

(d) Approval means a decision by the Power Authority to issue a permit or to otherwise authorize a proposed project or activity.

(e) Commissioner means the Commissioner of the New York State Department of Environmental Conservation.

(f) Coastal area means the State's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.

(g) Director means the Power Authority's Vice President of Environmental Management or such other person succeeding to the powers and duties of such office under a different title and, in any case, the officer or employee validly exercising such powers and duties in an acting or permanent capacity.

(h) Environmental assessment form (EAF) means a form used by the Power Authority to assist it in determining the environmental significance or nonsignificance of actions. The term short form EAF means a simplified EAF that may be used by the Power Authority to determine whether it has sufficient information on which to determine the environmental significance or nonsignificance of an unlisted action.

(i) Environmental impact statement (EIS) means a written document prepared in

accordance with this Part. An EIS may either be draft or final and, as appropriate in context, it may include a Federal draft or final EIS.

(j) Excluded action means an action which was undertaken, funded or approved prior to the effective dates set forth in SEQRA (see chapters 228 and 252 of the Laws of 1977 and 460 of the Laws of 1978).

(k) Exempt action means activities as listed in section 461.16 of this Part.

(l) Funding means any financial support given by the Power Authority, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action by an applicant.

(m) Lead agency means an agency principally responsible for carrying out, funding or approving an action, and therefore responsible for determining whether an EIS is required in connection with an action, and for the preparation and filing of the statement if one is required.

(n) Ministerial act means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act. Such law or regulatory requirements may involve, to a limited degree, a construction of language or intent.

(o) Negative declaration means a written statement prepared by the director, after conducting an environmental review of an action, which announces that the director has determined that the action will not have a significant effect on the environment.

(p) Positive declaration means a written statement prepared by the director, after conducting an environmental analysis of an action, which announces that the director has determined that the action will have a significant effect on the environment.

(q) Power Authority means Power Authority of the State of New York.

(r) State agency means any State department, agency, board, public benefit corporation, public authority or commission.

(s) Type I action means an action or class of actions listed in section 461.6 of this Part.

(t) Type II action means an action or class of actions that is not a Type I action and is listed in sections 461.7 and 461.17 of this Part. Notwithstanding the foregoing, no action having a significant impact on the environment, as determined pursuant to section 461.18 of this Part or defined as a "Type I Action" pursuant to regulations implementing SEQRA adopted by the New York State Department of Environmental Conservation shall constitute a Type II action hereunder.

(u) Unlisted action shall mean actions not excluded or exempt and not listed as a Type I or Type II action in this Part.

§ 461.4 Designation of lead agency

(a) If the action is a Type I or unlisted action, the director shall determine if other

agencies qualify as involved agencies.

(b) Where it is determined that other agencies are involved, the director shall mail the EAF, with Part 1 thereof completed, and a copy of an application, if applicable, to the involved agencies, notifying them that, within 30 calendar days of the date the EAF was mailed to them, a lead agency must be designated by agreement among them. If no lead agency is agreed upon within the 30-day period, the Power Authority, pursuant to 6 NYCRR 617.6(b)(5)(i), may request by certified mail or other form of receipted delivery the commissioner of the New York State Department of Environmental Conservation to designate a lead agency.

(c) Where it is determined that other agencies are involved and the activity is unlisted, the procedures set forth in subdivision (b) of this section are discretionary.

(d) Where an agency other than the Power Authority is determined to be a lead agency, the regulations of that agency apply in lieu of this Part; provided, however, that the determinations required pursuant to section 461.13(b) of this Part must be made.

§ 461.5 Action by the Power Authority

(a) If the action is an excluded, an exempt or a Type II action, no action under this Part is necessary.

(b) As early as possible, in the formulation and design of an action to be undertaken directly by the Power Authority, the director shall conduct an environmental analysis of the proposed action to determine whether the action may or will not have a significant effect on the environment.

(c) If the director determines that the action is a Type I action which will not have a significant effect on the environment, the director shall prepare and file a negative declaration following the procedures set forth in section 461.11(a) of this Part.

(d) If the director determines that the action is a Type I or unlisted action which may have a significant effect on the environment, and that the action does not require approval by other agencies, the director shall immediately prepare and file a positive declaration following the procedures set forth in section 461.11(a) of this Part. The director shall prepare or cause to be prepared draft and final EIS's following the procedures set forth in subdivisions (b)-(d) of such section.

(e) If the director determines that the action is a Type I or unlisted action which may have a significant effect on the environment, and that the action requires approval by other agencies, the director shall follow the procedures set forth in section 461.4 of this Part. If it is determined that the Power Authority is the lead agency, the procedures of subdivisions (c) and (d) of this section relating to the determination of significance and the preparation of an EIS shall be followed.

(f) If the director determines that the action is an unlisted action which will not significantly affect the environment, the director shall maintain a file of that determination and supporting reasons available for public inspection. Notices set forth in section 461.11 of this Part are not required.

(g) In the case of applications for permits or funding from the Power Authority, the director may require the applicant to supply any information in a specified form necessary to make the determinations required by this section or the preparation of an EAF. If an EIS is required, the applicant may prepare the EIS or request the authority to prepare it.

§ 461.6 List of Type I actions

(a) The purpose of the list of actions identified as Type I in this section is to identify those actions and projects that are more likely to require the preparation of EIS's than those not so listed (i.e., unlisted actions).

(b) The following actions are Type I if they are undertaken, funded or approved by the Power Authority:

(1) the adoption of a comprehensive resource management plan;

(2) the acquisition, sale, lease or other transfer of 100 or more contiguous acres of land;

(3) construction of new nonresidential facilities which meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds, provided that the expansion and the existing facilities, when combined, meet or exceed any threshold contained in this section:

(i) a project or action which involves the physical alteration of 10 acres;

(ii) a project or action which would use ground or surface water in excess of 2,000,000 gallons per day;

(iii) parking for 1,000 vehicles;

(iv) in a city, town or village having a population of 150,000 persons or less: a facility with more than 100,000 square feet of gross floor area; or

(v) in a city, town or village having a population of more than 150,000 persons: a facility with more than 240,000 square feet of gross floor area;

(4) any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;

(5) any nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to the Agriculture and Markets Law, article 25-AA, sections 303 and 304)which exceeds 10 percent of any threshold established in this section;

(6) any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to, any facility or site listed on the National Register of Historic Places, or any historic building, structure or site, or prehistoric site, that has been proposed by the Committee on the Registers for consideration by the New York State Board for Historic Preservation for a recommendation to the State historic officer for nomination for inclusion in said

National Register;

(7) any project or action, which exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space; and

(8) any action which exceeds the locally established thresholds or, if no such thresholds are established, any action which takes place wholly or partially within, or substantially contiguous to, any critical environmental area designated by a local agency pursuant to 6 NYCRR 617.14.

§ 461.7 Type II actions

(a) Actions or classes of actions which have been determined not to have a significant effect on the environment are classified as Type II actions.

(b) A list of Type II actions is contained in section 461.17 of this Part.

§ 461.8 Actions involving a Federal agency

(a) When a draft and final EIS for an action will be or has been prepared under the National Environmental Policy Act of 1969 (NEPA), the Power Authority shall have no obligation to prepare an additional EIS under this Part.

(b) When a negative declaration or other written threshold determination that the action will not require a Federal impact statement has been prepared under NEPA, the determination shall not constitute compliance with SEQRA. In such cases, the Power Authority shall follow the requirements for a SEQRA review contained in this Part.

(c) No SEQRA findings are required for actions which are excluded or exempt from SEQRA.

§ 461.9 Preparation and content of environmental impact statements

(a) EIS's shall be clearly and concisely written in plain language that can be read and understood by the public. Within the framework presented in subdivision (d) of this section, EIS's should address in detail only those specified adverse or beneficial environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate, considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material shall be summarized, and if it must be included in its entirety, it shall be referenced in the statement and included in an appendix.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or final EIS;

(2) the name or descriptive title of the action;

- (3) the location (county and town, village or city) of the action;
 - (4) the name and address of the Power Authority, and the name and telephone number of a person at the Power Authority who can provide further information;
 - (5) the names of individuals or organizations that prepared any portion of the statements;
 - (6) the date of its acceptance by the Power Authority; and
 - (7) in the case of a draft EIS, the date by which comments must be submitted.
- (c) If a draft or final EIS exceeds 10 pages in length, it shall have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement, focusing on issues of controversy, matters to be decided and major conclusions.
- (d) The body of all draft and final EIS's shall contain at least the following:
- (1) a concise description of the proposed action, its purpose and need;
 - (2) a concise description of the environmental setting of the areas to be affected, sufficient to permit an understanding of the effects of the proposed action and alternatives;
 - (3) a statement of the important environmental impacts of the proposed action, including short- and long-term effects and typical associated environmental effects;
 - (4) an identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed action is implemented;
 - (5) a description and evaluation of reasonable alternatives to the action which would achieve the same or similar objectives. The description and evaluation should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The no-action alternatives must also be discussed and evaluated;
 - (6) an identification of any irreversible and irretrievable commitments of resources which would be associated with the proposed action should it be implemented;
 - (7) a description of mitigation measures to minimize the adverse environmental impacts;
 - (8) a description of any of the proposed actions, where applicable and significant;
 - (9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric system needs in a manner reasonably consistent with the most recent state energy plan;
 - (10) a discussion of the effects of the proposed action on solid waste management where applicable and significant;

(11) a discussion of the effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection program, as implemented by the commissioner pursuant to article 55 of the Environmental Conservation Law;

(12) a list of any underlying studies, reports and other information obtained and considered in preparing the statement;

(13) in the case of a final EIS only, copies or a summary of the substantive comments received on the draft EIS and a response to such comments;

(14) in the case of a final EIS only, indication and identification of all revisions made to the draft EIS; and

(15) for State agency actions in the coastal area:

(i) when the action is not in an approved local waterfront revitalization program area, an identification of the applicable coastal policies of Executive Law, article 42, as contained in 19 NYCRR 600.5, and a discussion of the effects of the proposed action on such policies; or

(ii) when the action is in an approved local waterfront revitalization program area and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, an identification of the applicable policies of the local program and a discussion of the effects of the proposed action on such policies.

(e) An EIS may incorporate by reference all or portions of other documents, including EIS's which contain information relevant to the statement. When a statement incorporates by reference, the referenced document shall be briefly described, its applicable findings summarized, and the date of its preparation provided. The referenced documents shall be made available for inspection by the public within the time period for comment in the same places where the agency makes available copies of such statement.

(f) A final EIS may consist of the draft EIS, including any necessary revisions to it, copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing), and the Power Authority's substantive responses to the comments.

§ 461.10 Programmatic or generic environmental impact statements

(a) A programmatic or generic environmental impact statement may be used to assess the environmental effects of:

(1) a number of separate actions in a given geographic area which, if considered singly may have minor effects, but if considered together may have significant effects;

(2) a sequence of actions, contemplated by the Power Authority, a single agency or individual;

(3) separate actions having generic or common impacts; and

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) Generic or programmatic statements should set forth specific conditions or criteria under which future actions will be undertaken or approved, and shall include procedures and criteria for amendments or supplements to reflect impacts, such as specific impacts, which cannot be adequately addressed or analyzed in the initial statement. Such procedures shall include provision for public notice of amendments or supplements which allow for comment thereon in the same manner as was provided by the original statement.

(c) When an individual action is proposed which was encompassed in a programmatic EIS, and the action is to be carried out in conformance with the conditions discussed in the programmatic statement, a subsequent EIS evaluating site-specific impacts should be prepared only if site-specific impacts differ significantly from those addressed in the programmatic statement.

(d) In connection with projects that are to be developed in phases or strategies, the site-specific impacts of the individual project under consideration and, in more general or conceptual terms, the cumulative effects on the environmental and existing natural resource base of subsequent phases of a large project or series of projects that may be developed in the future, and that are under the ownership or control of the same project sponsor, should be discussed. In these cases, this part of the EIS shall discuss the important elements and constraints present in the natural and man-made environment that may bear on the conditions of a decision on the immediate project.

§ 461.11 Notices, circulation, filing and contents of SEQRA documents

(a) Notices of negative declarations and positive declarations shall:

(1) contain the following:

(i) a statement that it is a negative or positive declaration, as appropriate, for the purposes of article 8 of the Environmental Conservation Law;

(ii) the name and address of the lead agency;

(iii) the name and telephone number of a person at the Power Authority who can provide further information;

(iv) the nature and extent of the action and the action identifying number or name;

(v) the location of the action (county and city, town or village);

(vi) a brief description of the action;

(vii) in the case of a negative declaration, a brief explanation supporting the determination that the action will not have a significant effect on the environment; and

(viii) in the case of a positive declaration, a brief description of the possible significant environmental effects that have been identified, and a brief statement of the reasons supporting the determination; and

(2) be filed as follows:

(i) electronically at enb@gw.dec.state.ny.us and also with the Division of Environmental Permits, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1011;

(ii) with the appropriate regional office of the Department of Environmental Conservation;

(iii) in the office of the chief executive officer of the political subdivision in which the action will be principally located;

(iv) in the main office and appropriate regional office of the lead agency;

(v) if the action involves an applicant, with the applicant;

(vi) if other agencies are involved in approval of the actions, with each other agency; and

(vii) at the Power Authority's headquarters office and at any local offices or projects in the area affected by the activity;

(viii) by delivery to any person who has requested a copy.

(b) Notices of completion of the draft EIS shall:

(1) contain the following:

(i) a statement that it is a notice of completion of a draft EIS;

(ii) the name and address of the lead agency;

(iii) the telephone number of a person who can provide further information;

(iv) the location of the action (county and city, town or village);

(v) a brief description of the action and the nature of its potential environmental impact statement;

(vi) a statement indicating where and how copies of the statement can be obtained;

(vii) a statement that comments on the draft EIS are requested and will be received and considered by the director. The notice shall specify the public comment and review period on the draft EIS. Such period shall be not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following any public hearing on the draft EIS; and

(viii) notice of hearing, if applicable; and

(2) be filed as follows:

(i) at the locations set forth in paragraph (a)(2) of this section;

(ii) with the Department of Environmental Conservation, Division of Environmental Permits, 625 Broadway, Albany, NY 12233-1750; and

(iii) for actions in the coastal zone, with the Secretary of State.

(3) if the director determines that a hearing is to be held:

(i) a notice of hearing may be made as part of the notice required by subdivision (b) of this section or separately, providing the information as specified in subdivision (b) is contained in the notice of hearing;

(ii) the notice of hearing shall specify the time, place and purpose of the hearing and a summary of the information contained in the notice of completion of the draft EIS; and

(iii) the notice of hearing shall be published at least 14 calendar days in advance of the hearing date in a newspaper of general circulation in the area of the potential impacts and effects of the action.

(c) One copy of all draft EIS's prepared by or at the request of the Power Authority and made available for public inspection as follows:

(1) at the locations set forth in paragraph (a)(2) of this section;

(2) shall be filed with persons requesting it. Where sufficient copies of a statement are not available, the Power Authority may charge a fee to persons requesting the statement to cover its costs in making the additional statement available; and

(3) for actions in the coastal zone, with the Secretary of State.

(d) The final EIS, together with the notice of its completion, shall be filed in the same manner as a draft EIS.

§ 461.12 Responsibilities of the director

(a) With respect to Type I and unlisted activities where the Power Authority is the lead agency, the director shall make the initial determination of significance or nonsignificance. This determination will take into consideration the criteria set forth in section 461.18 of this Part, the information contained in the EAF and any other information which the director deems necessary to make such determination.

(b) If the director determines that an EIS is required, he shall prepare or cause to be prepared such EIS.

(c) Based upon the significance of the action and/or issues raised by any request for hearing, the director will determine if a hearing should be held. Any such hearing shall be for the purpose of obtaining additional public comment and shall be legislative in nature.

§ 461.13 Decisionmaking and findings requirements

(a) Prior to the Power Authority's decision on an action which has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS.

(b) The Power Authority, by its trustees or their delegate, shall not make a final decision to commence, engage in, fund or approve action that has been the subject of a final Federal or a final SEQRA EIS until it has:

(1) given consideration to the final EIS;

(2) made a written finding that the requirements of this Part have been met and the action is:

(i) consistent with social, economic and other essential considerations among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the relevant environmental impact statement; and

(ii) consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable; and

(3) prepared a written statement of the facts and conclusions relied upon in the EIS, supporting its decision and indicating the social, economic and other factors and standards which formed the basis of its decision.

(4) when the action is in the coastal area within the boundaries of an approved local waterfront revitalization program, and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the action must be consistent, to the maximum extent practicable, with the applicable policies of such program.

(c) The Power Authority shall not make a decision to disapprove an action based upon the EIS until it has prepared a written statement of the facts and conclusions relied on in the EIS or comments provided thereon.

§ 461.14 Fees and costs

(a) When an action subject to this Part involves an applicant, the Power Authority may charge a fee to the applicant in order to recover the actual costs of environmental review and/or preparing or reviewing the EIS; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of an EIS; and provided, further, that any fee charged must reflect the actual costs to the Power Authority for such preparation or review. Where an applicant does not choose to prepare the EIS, the Power Authority shall provide the applicant, upon

request, with an estimate of the costs for preparing such statement based on the total cost of the project for which funding or approval is sought.

(b) For nonresidential construction projects, the total project cost shall be the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material, as determined with reference to a current cost data publication in common usage such as Building Construction Cost Data by Means.

§ 461.15 Confidentiality

When an applicant submits a completed EAF, draft or final EIS, or otherwise provides information concerning the environmental impacts of a proposed project, the applicant may request that specifically identified information be held confidential upon a showing by the applicant that such information constitutes a trade secret. Prior to divulging any such information, the Power Authority shall notify the applicant of its determination of whether or not it will hold the information confidential.

§ 461.16 List of exempt actions

(a) Actions which are immediately necessary on an emergency basis for the protection or preservation of life, health, property or natural resources, including but not limited to water line or water storage breaks or leaks, contamination of water, threatened or actual dam failures, flooding and/or mechanical failures.

(b) Approval and execution of grants or contracts for minor reconstruction or rehabilitation, maintenance or repair of existing energy facilities or structures not involving an expansion of the facility or structure.

(c) Approval and execution of grants or contracts for the purchase of equipment and materials which will be used to rehabilitate, maintain or repair existing energy facilities or structures.

(d) All maintenance and repair activities involving no change in existing facilities and structures.

(e) All ministerial acts, including but not limited to:

(1) actions performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act. Such law or regulatory requirements may involve, to a limited degree, a construction of their language or intent;*

(2) any act, decision or commitment required to be made pursuant to SEQRA contractual agreements made prior to the effective date of SEQRA; and

(3) all enforcement actions and judicial and administrative proceedings commenced by or on behalf of the Power Authority against third parties to enforce compliance by such third party with any provision of any contract, law, rule or ordinance, by which such third party is bound.

(f) With respect to the requirements of subdivision 2 of section 8-0109 of SEQRA,

actions requiring a Certificate of Environmental Compatibility and Public Need under articles VII and VIII of the Public Service Law, and the preparation of applications and supporting documents for, and considerations related to the granting or denial of, any such certificate.

(g) With respect to the requirements of subdivision 2 of section 8-0109 of SEQRA, actions subject to the jurisdiction of the Adirondack Park Agency pursuant to section 809 of the Executive Law, including actions of the Adirondack Park Agency thereunder, and actions subject to the jurisdiction of local governments pursuant to section 808 of the Executive Law and actions of such local governments pursuant thereto.

(h) Actions of the Legislature of the State of New York or of any court.

(i) Activities regulated by the Federal government, to the extent that State law is preempted. _____

* FOOTNOTE: Examples include, but are not limited to, the installation of safety equipment or systems which the Power Authority is required to make by the Nuclear Regulatory Commission, and installation of equipment required by the Environmental Protection Agency or the Department of Environmental Conservation to assure environmental compatibility. _____

§ 461.17 List of Type II actions

(a) Reconditioning, rehabilitating or modernizing of existing facilities and structures, including essentially maintenance-type work with improvements to correct substandard features not involving large-scale new construction or expansion.

(b) Minor reconstruction of existing facilities and structures without making major expansion of said facilities or structures.

(c) The construction and location of small new structures and/or installation of minor new equipment, provided such construction or such location has no physical effect on unusual or unique areas, including Federal- or State-registered historic sites and critical areas designated in section 461.6(b)(8) of this Part.

(d) The conducting of engineering research and pilot plant studies to evaluate materials, equipment, methods and procedures, including but not limited to the installation of testing and monitoring equipment; provided that such studies do not involve a material change in the environment.

(e) The approval of funding for minor construction projects referenced in subdivisions (a)-(c) of this section.

(f) The preparation, review, approval or implementation of technical, engineering, economic, planning, environmental, feasibility or research studies, reports or memoranda which are preliminary to and may support the formulation of proposals for action(s) which do not otherwise commit the Power Authority to commence or engage in such action.

(g) The preparation of agreements (including leases, indentures, guarantees, construction agreements and similar documents) which are preliminary to and may support the formulation of proposal(s) for action(s) which do not otherwise commit the Power Authority to commence or engage in such action.

(h) The preparation and/or execution of construction contracts, involving an amount less than \$ 50,000 of labor, exclusive of the supply of materials, provided such construction which is the subject of such contract has no physical effect on unusual or unique areas, including Federal- or State-registered historic sites, and critical areas designated in section 461.6(b)(8) of this Part.

(i) Defining the scope of services, requests for proposals, negotiating and executing contracts with consultants for professional services.

(j) The preparation and/or execution of any purchase orders for materials, supplies or equipment appropriate to continued operation of authority offices or facilities.

(k) Planning, budgeting, cost estimation, preparation of work programs and other project process activities.

(l) The conducting of studies and the establishment of quality standards, including:

(1) engineering research studies to evaluate materials, methods, equipment and procedures;

(2) establishing quality standards for engineering materials in accordance with accepted engineering practices;

(3) preparation of soil and water inventories;

(4) establishment of equipment construction standards; and

(5) conducting studies to determine efficiency and safety of existing systems.

(m) Approval or adoption of plans, grants, contracts or permits to construct, replace, rehabilitate or convert existing equipment.

(n) Approval and execution of grants or contracts to prepare studies or program plans which do not commit the authority to undertake specific programs or activities.

(o) Preparation and adoption of new or revised comprehensive studies, or programs which do not commit the authority to undertake specific programs or activities.

(p) Approval and execution of contracts or grants with respect to existing structures for:

(1) the purchase or construction of fire/crash/rescue vehicles, buildings and other safety equipment to meet Federal requirements;

(2) the installation of fencing;

(3) the purchase and installation of security equipment;

- (4) the purchase and installation of lighting systems;
- (5) the purchase and installation of communication equipment;
- (6) the purchase of weather and other atmospheric measuring equipment and/or services;
- (7) the purchase of equipment necessary for facility maintenance; and
- (8) the purchase of fuel.
- (q) The preparation and approval of documents certifying compliance with Federal and State requirements, preliminary to the formulation of proposal(s) for action(s).
- (r) The preparation and/or execution of agreements for the purchase, sale, transmission or distribution of electricity, not involving the construction of new transmission lines or generating facilities.
- (s) The execution of a lease for the use of Power Authority-owned property, where such lease provides for the use of the land and/or structures in their present condition or with minor alterations, provided that the lease of real property is less than 50 contiguous acres.
- (t) Minor temporary permits for the use of Power Authority property, where such use does not involve the physical alteration of such property.
- (u) The sale of Power Authority surplus property, other than land, radioactive material, pesticides, herbicides or other hazardous material.
- (v) The acquisition, sale or other transfer of less than 25 contiguous acres of land.
- (w) Preparing and maintaining policies, manuals, directives, procedures, guidelines, etc., which do not commit the authority to undertake new programs significantly impacting the environment, and which do not involve a major reordering of priorities.
- (x) Review of environmental impact statements prepared by others.
- (y) All routine administration, coordination, review and internal management activities of the Power Authority.
- (z) Grants to State or local governments for projects that do not involve construction or expansion of structures.
- (aa) Acceptance of grants or loans from the Federal, State or local governments, or any agency thereof.
- (ab) Issuance or retirement of indebtedness.
- (ac) The fixing of rates or adoption of customer rules, regulations and procedures for delivery of electrical service from existing or licensed facilities.
- (ad) Acceptance, rejection, approval or denial, by the chairman or his duly

authorized agent, of:

(1) schedules of minimum charges; and

(2) operating agreements.

(ae) Repaving of existing highways or roads, not involving the addition of new travel lanes.

(af) Street openings for the purpose of repair or maintenance of existing utility facilities.

(ag) Installation of traffic control devices on existing streets, roads and highways.

(ah) Public or private forest management practices, other than the removal of trees or the application of herbicides or pesticides.

(ai) Maintenance of transmission right-of-way and existing facility landscaping or natural growth.

(aj) Contracts for the purchase of power or supply arrangements that are financial in nature, including contracts for differences, which do not commit the Power Authority to the construction of a large-scale energy facility.

(ak) Temporary storage or disposal of waste material generated at Power Authority facilities, when such storage or disposal complies with State or Federal agency regulations.

(al) Research and development contracts which do not involve a physical impact on the environment or an irreversible commitment to a course of action.

(am) License and permit renewals, where there will be no material change in permit conditions or the scope of permit activities.

(an) Minor temporary uses of land having negligible or no permanent effect on the environment.

(ao) The extension of utility distribution facilities to service new or altered single- or two-family residential structures or to render service in approved subdivisions.

(ap) Contracts or agreements contingent on the completion of SEQRA process or the obtaining of a Certification of Environmental Compatibility and Public Need pursuant to the Public Service Law.

(aq) Approval of resale rates, as specified in Parts 452 and 454 of this Title.

(ar) The operation or minor alteration of the following existing structures, buildings, facilities, mechanical equipment or topographical features involving negligible or no expansion of use beyond that previously existing. This category shall also include all levels of routine office and clerical activities, and the replacement of equipment with substantially identical equipment, except this exemption shall not apply to situations where the selection of substantial quantities of a source or type of material used in a project may have a significant environmental effect. It shall include, but not be

limited to, the following authority categories:

- (1) laboratories;
- (2) research stations;
- (3) campsites and day-use areas;
- (4) fishing docks and small piers, canoe carries, boat-launching sites, hunting and fishing access areas, trailheads and related structures;
- (5) seawalls, bulkheads and other shore-protection facilities and structures, fences, guardrails and barriers;
- (6) fish hatcheries, game farms and associated buildings and facilities;
- (7) park areas and associated facilities;
- (8) garages, service buildings and residences;
- (9) beaches and playgrounds;
- (10) headquarters and field offices;
- (11) fish screens, fish ladders, stream improvement structures, fish barrier dams, fishing piers, fish spawning and incubator facilities, wildlife habitat areas, artificial wildlife waterway devices, streamflow, springs and waterholes, stream channels (clearing of debris) to protect fish and wildlife resources;
- (12) roads, trails and paths, excluding the application of salts and other chemicals for snow and ice removal and betterments and safety-type projects, where the limits of the project are within the existing right-of-way, including parking lots, bridges, walkways, traffic signals and signs, lights and road drainage systems;
- (13) dams and docks, not involving significant construction activity or any material change in height, hydraulics or operating schedules;
- (14) streams, stream beds and existing ditches, including the cleaning of debris, silt, plant and tree roots and other obstructions from streams and ditches;
- (15) aqueducts, levees and diversion facilities;
- (16) water supply reservoirs;
- (17) water pumping stations, water mains, water meters, water tunnels and appurtenances thereto;
- (18) water treatment works;
- (19) gasoline-powered generating works;
- (20) watercourses and water bodies;

(21) sewers and subsurface disposal areas;

(22) sewage treatment works and associated facilities, including sewer interceptors, relief mains, outfalls, gatehouses, tidegates and other diversion structures, screens and combined sewer overflow treatment facilities;

(23) interior and exterior alterations involving such things as interior partitions, plumbing and electrical conveyances;

(24) the addition of safety or health protection devices for use during construction of, or in conjunction with, existing structures, facilities or mechanical equipment, or topographical features, including navigational devices; and

(25) the operation, alteration or replacement-in-kind of vehicles and equipment to be used at, or in conjunction with, the above items.

(as) The replacement, restoration, rehabilitation, reconstruction, renovation, demolition and removal of small existing items of equipment, structures or facilities, where the structure or facility to be modified or replaced will have substantially the same purpose and capacity as that replaced. Structures and facilities include, but are not limited to, those itemized under subdivision (ar) of this section. The activities described above in this category shall be limited to those having an estimated cost of \$ 500,000 or less, or which will have an interior area of not more than 10,000 square feet and not involve a total land area of more than two acres. Actions within this class are categorically exempt, as noted in subdivision (ar), except where substantially less harmful equipment having similar performance is available or where substantial noise, air, water or other pollution or the release of substantial waste products is likely to result from the reconstruction or replacement projects.

(at) The construction and location (or the allotment of funds therefor) of single, small, new facilities or structures where the total area of the structure does not exceed 10,000 square feet, or have an estimated cost exceeding \$ 500,000, and the surroundings are returned to their original condition after the construction/installation of the structure or facility. It shall also include additions of no more than 2,500 square feet to existing small structures or facilities. Actions within this category are exempt, except where construction activity may be reviewed as part of a whole, larger action not otherwise exempt, or series of actions, all of which are interrelated and logically form the component parts of a single larger action. It shall also include the installation of minor new equipment and facilities, such as air quality, other environmental monitoring facilities and research demonstration projects.

(au) Minor alterations in the condition of land, water, vegetation and/or fish and wildlife resources. This exemption shall not apply, for example, to the stockpiling on such lands of quantities of salt, corrosive chemicals, poisonous substances, fertilizers, etc., in quantities which may cause damage to the environment. The degree to which alteration is minor or not dangerous shall be determined on the basis of its actual and potential effect. This exemption shall include such actions as planting and landscaping to improve the general vegetation quality and similar projects. This exemption shall not include any substantial change in the authorized use for land where such change may have a significant environmental effect. It shall include, but not be limited to, the following:

(1) landscaping, groundskeeping and similar activities that may alter or temporarily disturb the surface of land, but which ultimately will return the land to substantially the same or better condition, such as minor soil grading, seeding, planting, etc.;

(2) soil and ground-water borings and tests, minor land cuts and brush clearing for survey purposes;

(3) the following silvicultural activities shall be considered minor: tree pruning; tree seeding and planting; weeding and releasing; noncommercial thinning; the improvement of cuttings and demonstration plot; the cutting of not more than 10 trees per acre in the saw timber class, which class shall include softwood trees of 9 inches diameter or more and hardwood trees of 11 inches diameter or more;

(4) forest management practices, including construction, maintenance and repair of facilities or structures and silvicultural activities in compliance with applicable rules and guidelines;

(5) the following site-specific and individual fish and wildlife activities shall be considered minor if they do not involve significant departures from established and accepted practices and if such actions are described in and are a part of general fish and wildlife management programs for which an EIS has been prepared: fish and wildlife habitat improvement; planting of native or naturalized fish and wildlife; harvesting or thinning of fish or wildlife surpluses; hunting, trapping and fishing permits; weeding of competing or parasitic species and species incompatible with man's interests; improvement or rehabilitation of fish or wildlife resources, fish barrier dams, small rock or log dams, fish passage structures, minor diking, cribbing, bank stabilization and stream deflectors and other structures or improvements, designed solely for fishery management purposes, which do not materially alter the natural character of the waterway; and other alterations which are relatively short-lived and will be followed by prompt replacement of fish or wildlife resources with the intention of providing equivalent or greater values;

(6) minor trenching and backfilling, where the surface is restored;

(7) eradication of alternate host plants of parasitic tree diseases, using registered herbicides applied on an individual plant basis;

(8) ground application of registered pesticides, on an individual tree basis, for the control of pests on Power Authority lands;

(9) sanitation to control forest pests that vector tree diseases or threaten residual trees; and

(10) parasite and predator invertebrate releases for forest pest suppression.

(av) Information collection, consisting of basic data gathering for possible future actions of the Power Authority; short-range planning activities, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource and which are not preliminary steps leading to a given action or project already identified. This category includes: water quality and pollution studies; traffic counts; engineering studies; boring studies; soil surveys and other materials sampling; feasibility studies; mineral and oceanographic surveys and research projects not involving the

removal of more than 100 cubic yards of material in any one location; the sampling of fish and wildlife population by netting, trapping and other acceptable scientific means; and inventory surveys conducted by Power Authority personnel in the field for game management, fish management, forestry, fire control, environmental protection, etc.

(aw) Inspections to check for performance of an operation or the quality, health or safety of an action, activity or project.

(ax) Administrative and service functions of the Power Authority, including but not limited to:

(1) Power Authority provision of technical assistance to other government agencies;

(2) Power Authority comments on legislation and regulations proposed by other agencies;

(3) training and education services of the Power Authority;

(4) routine contracts for printing, equipment maintenance, etc.;

(5) review of applications for aid to municipal customers, not involving major federally funded capital construction projects;

(6) the transportation of personnel, materials and equipment in connection with the operation of the Power Authority;

(7) preparation and adoption of operating budgets or modifications thereof;

(8) collective bargaining and employee personnel services;

(9) self-insurance or insurance contracting;

(10) dissemination of public information and public information activities;

(11) the making of investments by or on behalf of the Power Authority; and

(12) adoption of regulations, policies, procedures and legislative decisions in connection with any action on this list.

§ 461.18 Criteria for determination of significance

In order to determine whether a proposed Type I or unlisted action may have a significant effect on the environment, the impacts which may be reasonably expected to result from the proposed action must be compared against the criteria in this section, whether or not an EAF has been prepared. The following list is not exhaustive; however, these criteria are considered indicators of significant effects on the environment:

(a) a substantial adverse change in existing air quality, water quality or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding or drainage problems;

(b) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; or substantial adverse effects on a threatened or endangered species of animal or plant, or the habitat of such a species;

(c) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(d) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(e) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character;

(f) a major change in the use of either the quantity or type of energy;

(g) the creation of a hazard to human health or safety;

(h) a substantial change in the use, or intensity of use, of land or other natural resources or in their capacity to support existing uses;

(i) the creation of a material demand for other actions which would result in one of the above consequences;

(j) changes in two or more elements of the environment, no one of which has a significant effect on the environment, but which when taken together result in a substantial adverse impact on the environment; or

(k) two or more related actions undertaken, funded or approved by an agency, no one of which has or would have a significant effect on the environment, but which cumulatively meet one or more of the criteria in this section.

(1) For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(2) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (i.e., urban or rural);

(ii) its probability of occurring;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope; and

(vi) its magnitude.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 462.

PERSONAL PRIVACY PROTECTION LAW

- 462.1 Definitions
- 462.2 Purpose and scope
- 462.3 Assignment of responsibilities
- 462.4 Proof of identity
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- 462.6 Hours for public inspection and copying
- 462.7 Requests for records and personal information
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- 462.9 Correction of a record or personal information or denial of request for a record or amendment
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- 462.11 Statement of disagreement by data subject
- 462.12 Fees
- 462.13 Severability

§ 462.1 Definitions

(a) Power Authority means the Power Authority of the State of New York, also known as the New York Power Authority.

(b) Committee means the Committee on Open Government as constituted pursuant to subdivision 1 of section 89 of the Public Officers Law.

(c) Data subject means any individual about whom personal information has been collected by the Power Authority.

(d) Disclose means to reveal, release, transfer, disseminate or otherwise communicate personal information or records orally, in writing or by electronic or any other means other than to the data subject.

(e) Personal information means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject.

(f) Record means any item, collection or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject. The term record shall not include personal information which is not used to make any determination about the data subject if it is:

(1) a telephone book or directory which is used exclusively for telephone and directory information;

- (2) any card catalog, book or other resource material in any library;
 - (3) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing Power Authority information;
 - (4) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;
 - (5) information requested by the Power Authority which is necessary for the Power Authority to answer unsolicited requests by the data subject for information; or
 - (6) correspondence files.
- (g) System of records means any group of records under the actual or constructive control of the Power Authority pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

§ 462.2 Purpose and scope

(a) These regulations provide procedures for implementation by the Power Authority of the provisions of the Personal Privacy Protection Law relating to requests for records or personal information by data subjects. (Article 6-A of the Public Officers Law.)

§ 462.3 Assignment of responsibilities

(a) The Corporate Secretary of the Power Authority is hereby designated the officer responsible for ensuring that the Power Authority complies with the provisions of the Personal Privacy Protection Law and the regulations in this Part.

(b) The Executive Vice President - Business Services & Administration is responsible for coordinating the Power Authority's response to requests for records or personal information or amendments of records or personal information relating to data subjects who are employees or former employees of the authority. The Executive Vice President - Business Services & Administration may designate the Director - Employee Benefits and Human Resource Data, the human resources data supervisor and the human resources managers at the facilities as deputies who may coordinate responses to requests for records or personal information relating to data subjects who are authority employees or former employees.

(c) The Corporate Secretary is responsible for coordinating the Power Authority's response to requests for records or personal information or amendment of records or personal information relating to data subjects who are not employees or former employees of the authority.

(d) The address of the Corporate Secretary and the Executive Vice President - Business Services & Administration is:

Power Authority of the State of New York

123 Main Street

White Plains, NY 10601.

(e) The Executive Vice President - Business Services & Administration and/or his or her deputies, with respect to requests relating to employees or former employees of the authority, and the Corporate Secretary, with respect to requests relating to other persons, are responsible for:

(1) assisting a data subject in identifying and requesting a record or personal information, if necessary;

(2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record or personal information sought:

(i) making the record or personal information available for inspection in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) providing the data subject with a copy of the record or personal information upon payment of or offer to pay established fee; or

(iii) denying access to the record or personal information in whole or in part and explaining in writing the reasons therefor;

(4) upon request, certifying that a copy of a record or personal information is a true copy; or

(5) upon request, certifying that:

(i) the Power Authority does not have possession of the record or personal information sought;

(ii) the Power Authority cannot locate the record or personal information sought after having made a diligent search; or

(iii) the record or personal information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the Power Authority.

§ 462.4 Proof of identity

(a) When records or personal information are made available in person following an oral or written request from a data subject who is an authority employee, or following a written request from a data subject who is other than an authority employee, the Power Authority may require appropriate identification, such as a

driver's license, an identifier assigned to the data subject by the Power Authority, a photograph or similar information that confirms that the record or personal information sought pertains to the data subject.

(b) When a request is made by mail, the Power Authority may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification that confirms that the record or personal information sought pertains to the data subject.

(c) Proof of identity shall not be required regarding a request for a record or personal information accessible to the public pursuant to article 6 of the Public Officers Law.

§ 462.5 Location

Records or personal information shall be made available for review at the office of the Power Authority located at 123 Main Street, White Plains, New York 10601, or in the discretion of the authority, at the various facilities maintained by the Power Authority. The various facilities include:

Albany Office

30 South Pearl Street - 10th Floor

Albany, NY 12207

Blenheim-Gilboa Pumped Storage Project

Valenti Road

Gilboa, NY 12076

Frederick R. Clark Energy Control Center

Glass Factory Road

Marcy, NY 13403

Niagara Power Project

5777 Lewiston Road

Lewiston, NY 14092

Charles Poletti Power Project

31st Street and 20th Avenue

Astoria, NY 11105

St. Lawrence - Franklin D. Roosevelt Power Project

Robert Moses Power Dam

Massena, NY 13662

§ 462.6 Hours for public inspection and copying

The Power Authority shall produce records and personal information during regular business hours.

§ 462.7 Requests for records and personal information

(a) All requests shall be made in writing, except that the authority may make records or personal information available to a data subject who is an authority employee upon an oral request made in person after the employee has demonstrated proof of identity.

(b) A request shall reasonably describe the records and personal information sought. Whenever possible the data subject should supply identifying information that assists the Power Authority in locating the records or personal information sought.

(c) Within five business days of the receipt of a request, the Power Authority shall provide access to the record or personal information, deny access in writing explaining the reasons therefor or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

§ 462.8 Amendment of records and personal information

Within 30 business days of a request from the data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the Power Authority shall:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed; or

(b) inform the data subject in writing of the denial of the request to correct or amend the record or personal information, including the reasons therefor.

§ 462.9 Correction of a record or personal information or denial of request for a record or amendment

(a) Denial of a request for records or personal information or amendment or correction of a record or personal information:

(1) shall be in writing, explaining the reasons therefor; and

(2) shall identify the person to whom an appeal may be directed.

(b) A failure to grant or deny access to records or personal information within five business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record or personal information within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

(c) Any such denial may be appealed to:

David E. Blabey, Esq.

Executive Vice President, Secretary & General Counsel

New York Power Authority

123 Main Street

15th Floor

White Plains, NY 10601.

§ 462.10 Appeal

(a) Any data subject denied access to a record or personal information or denied a request to amend or correct a record or personal information may, within 30 days of such denial, appeal in writing to the person designated in section 462.9(c) of this Part.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or personal information or amendment or correction of a record or personal information;

(2) the record or personal information that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, a correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed.

(e) The Power Authority shall immediately forward to the committee a copy of any appeal made pursuant to these regulations upon receipt and a copy of the determination thereof.

§ 462.11 Statement of disagreement by data subject

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the Power Authority a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; and

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record or personal information has been or is disclosed.

(b) Upon receipt of a statement of disagreement by a data subject, the Power Authority shall:

(1) clearly note any portions of the record or personal information that are disputed; and

(2) attach the data subject's statement as part of the record or personal information.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure, the Power Authority may also include a concise statement of its reasons for not making the requested amendment or correction.

§ 462.12 Fees

(a) Copies of records or personal information shall be provided:

(1) at a rate of 25 cents per page of up to 9 x 14 inches; or

(2) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

(b) The cost of mailing copies of records or personal information shall be borne by the data subject requesting such records or personal information.

§ 462.13 Severability

If any provision of these regulations or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK

PART 463.

PROMPT PAYMENT POLICY

- 463.1 Policy
- 463.2 Definitions
- 463.3 Responsibility for prompt payment
- 463.4 Prompt payment procedure
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§ 463.1 Policy

This statement is intended to establish rules and regulations as required under section 2880 of the Public Authorities Law describing the prompt payment policy of the Power Authority of the State of New York (the authority). Subject to the conditions and exceptions set forth in section 2880 of the Public Authorities Law and herein, in the event any proper invoice is not paid promptly the authority shall be liable for the payment of interest on late payments. This policy shall apply to all contracts entered into on or after April 30, 1988.

§ 463.2 Definitions

(a) Contract means an enforceable agreement entered into between the authority and a contractor.

(b) Contractor means any person, partnership, private corporation or association: (1) selling materials, equipment or supplies or leasing property or equipment to the authority; (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for or on behalf of the authority; or (3) rendering or providing services to the authority pursuant to a contract.

(c) Designated payment office means the office designated by the authority to which a proper invoice is to be submitted by a contractor.

(d) Proper invoice means a written request for a contract payment that is submitted by a contractor to the authority's designated payment office setting forth the description, price and quantity of goods, property or services delivered or rendered in accordance with the terms of the contract, in such form and supported by such other substantiating documentation as the authority may reasonably require.

(e) Receipt of an invoice and invoice received date mean the later of: (1) the date on which a proper invoice is actually received in the designated payment office; or (2) the date on which the authority receives the purchased goods, property or services covered by the proper invoice which, with regard to final payments on construction contracts, shall mean the date on which all the contract work has been accepted as

completed by the authority in accordance with the contract terms.

(f) Setoff means the reduction by the authority of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the authority.

§ 463.3 Responsibility for prompt payment

The controller shall have the responsibility for the implementation of the prompt payment policy and the prompt payment of all proper invoices under the general guidance and supervision of the Executive Vice President, Finance and Administration.

§ 463.4 Prompt payment procedure

(a) A contractor shall request payment under a contract by submitting a proper invoice to the authority at its designated payment office at the time and in the manner specified in the contract.

(b) The authority shall have 15 calendar days after receipt of an invoice at its designated payment office to notify the contractor of certain facts and conditions, including but not limited to those listed below, which, in the opinion of the controller, justify extension of the statutory payment period:

- (1) there is a defect in the delivered goods, property or services;
- (2) there is a defect in the invoice;
- (3) there are suspected defects or improprieties of any kind, the existence of which prevent the commencement of the statutory payment period;
- (4) prior to payment a statutory or contractual provision requires an inspection period or an audit to determine the resources applied or used by the contractor in fulfilling the contract terms;
- (5) a proper invoice must be examined by the Federal government prior to payment;
- (6) the authority is prevented from making payment by reason of filing of a lien, attachment, other legal process or requirement of law. Any time taken to satisfy or rectify any such facts or conditions shall extend the date by which contract payment must be made in order for the authority not to become liable for interest payments by an equal period of time.

(c) Should the authority fail to notify a contractor of such facts and conditions within 15 calendar days of the invoice received date, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. Should the authority, in such situations, fail to provide reasonable grounds for its contention that a fact or condition justifying a time extension exists, the date by which contract payment must be made in order for the authority not to become liable for interest payments shall be calculated from the invoice received

date.

(d) The authority shall make payment within 45 calendar days after an invoice received date. Effective July 1, 1989, the authority shall make payment within 30 calendar days, excluding legal holidays, after an invoice received date occurring after that date.

(e) Except for the payments described in section 464.5 of this Title, every payment by the authority to a contractor pursuant to a contract is eligible for interest should the authority fail to make such payment within 45 days after the invoice received date for contracts entered into between April 30, 1988 and June 30, 1989 and within 30 days on or after July 1, 1989.

(f) The authority shall not be liable for interest on any retention amounts withheld by the authority in accordance with the terms of the contract.

(g) Interest shall be computed at the rate set by the State Tax Commission for corporate taxes pursuant to paragraph (1) of subsection (e) of section 1096 of the Tax Law.

(h) The authority has available funds in its custody to pay all interest penalties.

§ 463.5 Exceptions

Payments are not eligible for interest when they are due and owing by the authority:

(a) under the Eminent Domain Procedure Law;

(b) as interest allowed on a judgment by a court pursuant to any provision of law other than section 2880 of the Public Authorities Law;

(c) to the Federal government; to any State agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(d) in situations where the authority exercises a legally authorized setoff against all or part of the payment due the contractor.