RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Banking Department

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-51-03-00009-E
Filing No. 1365
Filing date: Dec. 9, 2003
Effective date: Dec. 11, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 41 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 6-i and 6-l

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Chapter 626 of the Laws of 2002 is effective April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, will affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. Mortgage lenders and brokers and consumers should be aware of the revised regulatory requirements prior to the effective date of chapter 626 in order that mortgage loans made on and after April 1, 2003 conform legally to the statutory and regulatory requirements.

Subject: Making of certain residential mortgage loans, referred to as high cost home loans.

Purpose: To conform the provisions of Part 41 of Title 3 NYCRR to various provisions of section 6-l of the Banking Law, and also clarify certain provisions of such section 6-l.

Substance of emergency rule: Section 41.1(a) is amended to revise the definition of a lender subject to part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage to fifteen years.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability and to add certain conditions in order to determine that repayment ability has been "corroborated by independent verification."

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by particular lenders when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is amended to delete a reference to median family income.

Section 41.3(g) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add conditions to determine whether a loan has a net tangible benefit to the borrower.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 7, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supercede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers appropriately make high cost loans in conformity with the intended legislative objectives.

3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

7. Duplication:

None.

8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers and therefore corresponds to the comparative definition in HOEPA. The amendments would adopt the thresholds and definitions established by section 6-l.

10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, in order to comply with the standards of 6-l and the proposed amendments to Part 41.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements private on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

Department of Health

EMERGENCY RULE MAKING

Smoking Cessation Products

I.D. No. HLT-39-03-00003-E
Filing No. 1369
Filing date: Dec. 5, 2003
Effective date: Dec. 5, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 85.21 of Title 10 NYCRR and section 505.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a(4)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Immediate adoption of this rule is necessary to preserve the public health. Curtailing tobacco use is a public health priority. Numerous studies have shown the health risks associated with cigarette smoking including higher incidences of lung cancer, asthma and heart disease. The Medicaid program began covering prescription smoking cessation products on October 1, 1999. Since that tie, drug manufacturers have changed the prescription status of the majority of these products, including nicotine replacement patches, so that they are now available only as over-the-counter items. This rule is needed for Medicaid recipients who are being treated with such smoking cessation and nicotine replacement products to get Medicaid coverage of them. Failure to adopt this regulation immediately will result in an interruption in patient care and increased health risk detrimental to the public health.

Subject: Smoking cessation products.

Purpose: To add over-the-counter (OTC) smoking cessation products to the list of Medicaid reimbursable OTC products.

Text of emergency rule: A new subdivision (t) is added to section 85.21 of Part 85 of 10 NYCRR to read as follows:

85.21 Establishment of list of reimbursable, nonprescription drugs. Pursuant to section 365-a of the Social Services Law, nonprescription drugs included in the therapeutic categories listed in this section may be reimbursed in the New York State Medical Assistance Program.

*****

(t) Smoking Cessation

The first sentence of paragraph (3) of subdivision (f) of section 505.3 of 18 NYCRR is hereby amended to read as follows:

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(3) Payment will only be made for nonprescription drugs listed in [Part 528 of this Title] *10 NYCRR section 85.21*.

*****

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-39-03-00003-P, Issue of October 1, 2003. The emergency rule will expire February 2, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained in Section 365-a(4) of Social Services Law which allows the Commissioner of the New York State Department of Health (DOH), by regulation, to specify certain non-prescription drugs to be reimbursed as an item of medical assistance.

Legislative Objective:

The legislative objective of this authority is to provide Medicaid reimbursement for medically necessary care, services, and supplies.

Needs and Benefits:

Governor Pataki and Commissioner of Health Novello have acknowledged that curtailing tobacco use is a matter of public health and have made a strong commitment to support New Yorkers' efforts to quit smoking. As a result, the Medicaid Program began coverage of prescription smoking cessation agents October 1, 1999. Since that time drug manufacturers have changed the prescription status of the majority of these products, especially nicotine replacement patches, so that they are now available only as over-the-counter (OTC) items. These amendments are needed for Medicaid recipients who are being treated with these smoking cessation and nicotine replacement products to get Medicaid coverage of these OTC products. Interruption of Medicaid coverage would be particularly threatening to Medicaid recipients who have initiated treatment successfully with prescription versions of these products and who may find them unavailable now that they have been converted to OTC products. Failure to continue smoking cessation therapy brings the high risk of resumption of tobacco use.

Numerous studies have shown the health risks associated with cigarette smoking including higher incidences of lung cancer, asthma, and heart-related diseases such as coronary artery disease. The Commissioner has determined that an interruption in patient treatment and the health risk of non-coverage of these products poses an immediate health risk to the Medicaid population. As a result, it is the Department's commitment to make OTC smoking cessation products immediately available to the Medicaid population.

COSTS:

Costs for the Implementation of, and Continuing Compliance with, this Regulation to Regulated Entity:

This amendment will not increase costs to the regulated parties. It will increase revenues to providers to the extent that Medicaid will provide reimbursement for products not currently covered by the Medicaid Program, such as nicotine replacement gum.

Costs to State and Local Government:

The only cost to State and Local Government is associated with Medicaid reimbursement of OTC agents in the form of State and local shares. For SFY 00-01, State share amounted to $312,596 and the local share was $312,596.

Costs to the Department of Health:

There will be no additional costs to DOH for implementation of this rule.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district, other than that described in Costs to State and local Government.

Paperwork:

This amendment will not impose any additional paperwork requirements.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

The Department has examined and supports other methods of smoking cessation activities and has provided smoking cessation resource information to our Medicaid providers and local tobacco coalitions. However, many of these resources include the use of smoking cessation products as an integral part of a successful smoking cessation regimen. The Department has covered these products on a prescription basis but now needs to cover the OTC as soon as possible so that Medicaid recipients will not suffer any lapse in treatment.

The Department recognizes that other changes need to be made to regulations governing Medicaid coverage of prescription and OTC drugs and is committed to a full review and revision of these regulations to reflect current practices. However, due to the immediate need to cover OTC smoking cessation products, that action will take place following the filing of this amendment.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective on the date of filing.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This amendment affects 4085 pharmacies actively enrolled in the Medicaid Program. This amendment will allow pharmacies to receive Medicaid reimbursement for over-the-counter (OTC) smoking cessation agents. The cost of providing OTC tobacco cessation products is provided

in the following table. This data represent gross amounts unless otherwise noted.

Smoking Cessation Products	Fiscal Year 00-01*	Fiscal Year 01-02**
All Agents-Prescription and OTC	$5,138,892	$3,885,960
Prescription Agents	$3,888,508	$2,971,488
OTC Agents	$1,250,384 $312,596 (58 county share)	$914,472

* Data Source DOH/OMM Audit, Fiscal & Program Planning Data Mart (5/15/2001)
** Data from 4/1/01 through 11/30/01

Fifty-eight (58) local social services districts administer the Medicaid Program in New York State and share in the cost of services provided to eligible recipients who receive Medicaid through their districts. For SFY 00-01, the local share for OTC smoking cessation products was $312,596.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

There are no initial capital costs of compliance with this rule. The Department has provided data regarding the increase in gross pharmacy expenditures in the above table. The local government share of is also detailed in the above table.

Economic and Technological Feasibility:

The slight increase in Medicaid pharmacy costs associated with OTC smoking cessation products is offset by the long term savings in decreased hospital stays and other health care costs related to smoking and its secondary effects.

The proposed amendment will not change the way provider's bill for services or affect the way the local districts contribute their local share of Medicaid expenses for pharmacy. Therefore, there is no concern about the technological feasibility of this amendment.

Minimizing Adverse Economic Impact:

This regulation has no specific impact on small businesses other than to allow Medicaid reimbursement to pharmacies for OTC smoking cessation products. This should be seen by those pharmacies as a benefit. The slight increase in Medicaid costs to local governments as a result of the proposed rule should ultimately be offset by long term savings on healthcare associated with smoking related illnesses in the Medicaid population. Both the Governor and the Commissioner have made public statements regarding their commitment to helping Medicaid eligible individuals to quit smoking.

Opportunity for Small Business and Local Government Participation:

The Department has discussed this proposed rule with representatives of the Pharmacists Society of the State of New York and has presented it to the Department's Pharmacy Advisory Committee (composed of pharmacists actively participating in the Medicaid program) and the Department's Medical Advisory Committee (composed of physicians actively participating in the Medicaid program). Information regarding the rule finalization was sent to all local districts and the Office of Medicaid Management did not receive any comments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required because the proposed rule, which merely adds over the counter smoking cessation products to the list of products covered by Medicaid, does not impose an adverse impact on rural areas and will not impose reporting, record keeping or other compliance requirements on public or private entities in rural areas. This finding is based on the fact that almost all of the products being added to the list of covered OTC products have previously been covered as prescription items.

Job Impact Statement

The Department has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities. This rule makes available Medicaid reimbursement for over the counter smoking cessation products which were previously available by prescription only. No impact on employment is anticipated.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Water Systems-MTBE

I.D. No. HLT-36 -03-00009-A
Filing No. 1367
Filing date: Dec. 9, 2003
Effective date: Dec. 24, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Subpart 5-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1) and 225(1)

Subject: Public water systems-MTBE

Purpose: To adopt a revised maximum containment level (MCL) of 0.010 mg/L for methyl-tertiary-butyl-ether (MTBE) and prescribe analytical procedures and monitoring requirements for affected public water systems.

Substance of final rule: Section 5-1.52, Table 3 is amended to add the following contaminant and to establish a more restrictive maximum contaminant level (MCL) of 0.010 MCL (mg/L for Methyl-tertiary-butyl-ether (MTBE).

Section 5-1.52, Table 9B is amended to add methyl-tertiary-butyl-ether (MTBE) as a contaminant for which monitoring would coincide with preexisting principal organic contaminant monitoring requirements for community and nontransient noncommunity water systems.

Section 5-1.52, Table 13 is amended to extend the provisions for state, consumer or public notification to MTBE as required by this action.

Appendix 5-C, II. ORGANIC CHEMICALS, is amended to include a Section C. -Methyl-tertiary-butyl-ether (MTBE) Analytical Requirements. This section includes approved analytical methods, namely, EPA Method 502.2 (as most recently amended by the State) and EPA Method 524.2.

Section 5-1.22(b) is amended to reference the 1997 edition of the "Recommended Standards for Water Works" as this document is updated every five years, and currently, the 1987 edition is referenced. Section 5-1.22(b) is amended to also reference the 1995 edition of the Department's "Rural Water Supply" booklet, as the 1966 edition is currently referenced. The most current versions of these documents are already in widespread use.

Appendices 5-A and 5-B are amended to reflect the 1997 edition of the "Recommended Standards for Water Works" and the 1995 edition of "Rural Water Supply".

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 5-C, subsection D.

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Although the regulation has been changed since it was published in the *State Register* on September 10, 2003, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

In total, 3 comments were received regarding the proposed rule making: 2 private individuals and 1 environmental activist group responded. All comments are in accord with the proposed rule, establishing a maximum contaminant level (MCL) of 0.010 milligrams per liter for MTBE in public drinking water systems. One response included a comment that they did NOT support any of the alternatives listed in the proposal, which included: to keep the existing MCL of 50 parts per billion; or to wait for the federal government to establish an MCL for MTBE.

It should be noted that a typographical error was identified in the proposed rule making notice. In the section entitled "Substance of proposed rule", the MCL is incorrectly reported as 0.10 mg/L, instead of 0.01 mg/L. This typographical error does not occur in any other location of the notice and does not affect the text of the regulation.

NOTICE OF ADOPTION

Physician Profiling

I.D. No. HLT-37-03-00006-A
Filing No. 1370
Filing date: Dec. 5, 2003
Effective date: Dec. 24, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 1000 to Title 10 NYCRR.

Statutory authority: Patient Health Information and Quality Improvement Act of 2000

Subject: Physician profiling.

Purpose: To implement the Patient Health Information and Quality Improvement Act of 2000.

Text of final rule: Pursuant to the authority vested in the Commissioner of Health by section 2995(1)(b) of the Public Health Law, a new Chapter VIII consisting of Part 1000 is hereby added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon filing of a Notice of Adoption in the New York *State Register* to read:

Chapter VIII
Physician Profiling
Part 1000
Physician Profiles

1000.1 Definitions.

For purposes of making individual physician profiles available for dissemination to the public, pursuant to the provisions of section 2995-a of the Public Health Law, the following definitions shall apply:

(a) "Board certification" means a specialty or subspecialty in which a physician is certified by the American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA), Royal College of Physicians and Surgeons of Canada (RCPSC) or The College of Family Physicians of Canada (CFPC).

(b) "Concise statement" means a typewritten statement not exceeding 1,000 words which relates solely to information contained in the physician's profile. Statements which include the following prohibited language shall not be published with a physician's profile:

(1) potentially defamatory information that includes names of specific individuals or groups of individuals or any potentially defamatory information that could result in identification of an individual or individuals other than the physician who is making the concise statement;

(2) general statements relating to physician disciplinary or judicial processes; or

(3) statements that do not relate to the factual information contained in the physician's profile.

(c) "Graduate medical education" means a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA), Royal College of Physicians and Surgeons of Canada (RCPSC) or The College of Family Physicians of Canada (CFPC).

(d) "Loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons related to the quality of patient care delivered" means the loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons including, but not limited to:

(1) incompetence in providing direct patient care;

(2) sexual abuse or harassment of hospital staff or patients;

(3) disciplinary actions taken because of professional misconduct in any state related to the quality of patient care delivered;

(4) commission of crimes related to the quality of patient care delivered; and

(5) lack of maintaining accurate medical records.

(e) "Physician profile" means information collected on physicians currently licensed and registered in New York State that shall be available for dissemination to the public in accordance with section 2995-a of the Public Health Law.

(f) "Place" means, for purposes of reporting malpractice award, judgment, and settlement information, the geographic location where the injury occurred as a result of the malpractice or alleged malpractice, office practice location of the particular physician at the time of the malpractice or alleged malpractice, or county in which the malpractice award or judgment is filed. The department shall specify which of such places shall be included on reports required to be submitted by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law.

(g) "Within the most recent 10 years" means:

(1) for purposes of physician self-reporting, the period beginning 10 years prior to January 1, 2002 or the date the department initially collects information from a licensed registered physician, whichever is later; and

(2) for purposes of public dissemination of physician profiles, the period beginning 10 years prior to the day a physician profile is being made available for dissemination to the public.

1000.2 Criminal convictions.

(a) The department shall collect and make available to the public, and physicians shall submit, if applicable, information regarding criminal convictions within the most recent 10 years for any and all offenses under the laws of New York State or any other jurisdiction.

(1) "Offenses" shall include only felonies or misdemeanors, as defined under the laws of the jurisdiction within which such felonies or misdemeanors take place.

(2) "Conviction" means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument, as defined in section 1.20 of the Criminal Procedure Law.

(b) Physicians shall submit to the department, if applicable, information regarding criminal convictions within the most recent 10 years that includes:

(1) name of the offense;

(2) state, province or country in which the conviction occurred; and

(3) date of conviction.

1000.3 Malpractice awards, judgments and settlements.

(a) Collection. The department shall collect and physicians shall submit, if applicable, the following information regarding all medical malpractice court judgments, arbitration awards and malpractice settlements within the most recent 10 years in which a payment has been awarded or made to a complaining party:

(1) date of each award, judgment or settlement, determined as follows:

(i) for arbitration awards, the date the arbitrator issued the award;

(ii) for judgments, the date of entry of the judgment; and

(iii) for settlements, the date of entry of the stipulation or, if no entry, the last date on which any person signed the settlement document;

(2) date payment was made or date claim was closed. The date a claim was closed is the date entered by an insurance company or third party reporter that the claim is resolved;

(3) amount of each award, judgment or settlement;

(4) place(s) of each award, judgment or settlement as specified by the department in accordance with section 1000.1(f) of this Part; and

(5) any other information deemed necessary by the department to implement the provisions of this subdivision.

(b) Public dissemination. (1) The department shall make available to the public information collected in accordance with subdivision (a) of this section regarding:

(i) all medical malpractice court judgments and arbitration awards within the most recent 10 years in which a payment has been awarded or made to a complaining party; and

(ii) malpractice settlements which exceed two in number within the most recent 10 years in which a payment has been awarded or made to a complaining party.

(2) In the case where the total number of malpractice settlements is two or fewer, the department shall make available to the public information collected in accordance with subdivision (a) of this section in those cases where it is alleged that a malpractice event resulted in death or permanent injury, and where the department has considered any information submitted in accordance with subparagraph (ii) of this paragraph.

(i) "Permanent injury" shall include, but is not limited to, the following:

(a) loss of finger or fingers;
(b) loss or permanent damage to organ or organs;
(c) deafness;
(d) loss of any limb or limbs;
(e) loss of eyes or eyesight;
(f) loss of kidney or kidneys;
(g) loss of lung or lungs;
(h) paraplegia;
(i) brain damage;
(j) quadriplegia;

(k) severe brain damage;

(l) lifelong care;

(m) fatal prognosis;

(n) any permanent loss or impairment (unable to function at same level prior to occurrence) of body part;

(o) any permanent loss or impairment of bodily function;

(p) any permanent physical or mental impairment that substantially limits one or more of the major life activities of an individual; or

(q) death.

For purposes of this subparagraph, the department may use information collected in accordance with section 315 of the Insurance Law, including information relating to death or the seriousness of injury, or self-reported by physicians as required by subdivision (3) of section 2995-a of the Public Health Law.

(ii) (a) A physician may provide additional factual clinical information pertinent to the department's determination of whether settlement information is relevant to patient decisionmaking. Such information, if provided, will be reviewed by a panel appointed by the department to conduct such reviews. The panel is comprised of at least three persons, the majority of whom are physicians, at least one of whom is a physician of the same specialty as the physician whose settlement is under review. The panel shall submit its recommendation to the Commissioner of Health regarding whether, based upon the information provided by the physician whose settlement is under review, the settlement is relevant to patient decisionmaking. The recommendation of the panel that a settlement is not relevant for patient decisionmaking shall be predicated upon a preponderance of clinical information indicating that, despite the awarding of a payment to a complaining party, appropriate provision of patient care was provided.

(b) Additional clinical information provided by a physician must be received by the department postmarked within 30 days of the date of the letter transmitting the physician's medical malpractice review copy as specified in section 1000.4(c) of this Part. Requests for an extension of the 30-day period will be considered only if they:

(1) are in writing and received by the department or its agent within the 30-day period or received orally by the department or its agent within the 30-day period followed by a written request for the extension postmarked within five days of the department receiving the oral request or the expiration of the 30-day period, whichever is later;

(2) include the reason(s) why the extension is needed, which must be related to circumstances that are beyond the physician's control; and

(3) indicate the amount of additional time needed.

This clause does not obligate the department to grant extensions. Further, the department may deny any request received beyond the required time frames or missing information required by subclauses (1)-(3) of this clause. Public dissemination of medical malpractice settlement information will be suspended while the department is reviewing the request for an extension. The department will notify the physician in writing of its decision to either grant or deny an extension.

(iii) Consumers shall be advised by the department on a physician profile to contact the physician for more information regarding malpractice awards, judgments and settlements in order to facilitate patient decisionmaking concerning health care quality.

(3) Public dissemination of information regarding medical malpractice judgments, arbitration awards, and settlements under this section shall be made in graduated categories indicating whether the payment award is average, above average or below average, as set forth in subparagraph (i) of this paragraph, in comparison to other payment awards made to complaining parties within the same specialty. For purposes of this paragraph, "specialty" shall mean a specified area of medical practice including, but not limited to, anesthesiology, family practice, internal medicine, obstetrics and gynecology, pediatrics, physical medicine and rehabilitation, psychiatry, radiology and general surgery. For purposes of comparing payment awards, the department may calculate average, above average and below average amounts, and periodically update them, at least annually, based upon the most recent malpractice payment award information submitted to the department by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law, consistent with geographic areas of the State used by the Insurance Department to establish medical malpractice insurance premiums, as set forth in subparagraph (ii) of this paragraph. Average, above average, and below average amounts are based upon quartiles. Quartiles are developed by taking all claims for doctors within a certain specialty in a certain geographic region and dividing them, lowest to highest, into four groups (quartiles) of equal numbers.

(i) (a) An "average" payment award means a payment award amount falling in the middle two quartiles of payment award amounts for a certain specialty in a certain geographic region.

(b) A "below average" payment award means a payment award amount falling in the lowest quartile of payment award amounts for a certain specialty in a certain geographic region.

(c) An "above average" payment award means a payment award amount in the highest quartile of payment award amounts for a certain specialty in a certain geographic region.

(ii) (a) If there are at least eight claims in each of four regions, quartiles will be developed for each of four regions for a particular specialty as follows:

Region A = New York, Orange, Rockland, Sullivan, Westchester, Bronx, Kings, Queens, Richmond, Nassau and Suffolk Counties

Region B = Columbia, Dutchess, Greene, Putnam and Ulster Counties

Region C = Erie and Niagara Counties

Region D = All Other Counties

(b) If there are an insufficient number of claims to develop quartiles for each of four regions as specified in clause (a) of this subparagraph, then quartiles will be developed for each of two regions for a specialty if there are at least eight claims in each of two regions as follows:

Downstate = Region A

Upstate = Combined Regions B, C, and D

(c) If there is an insufficient number of claims to develop quartiles for downstate and upstate, quartiles will be developed on a statewide basis for a specialty.

1000.4 Collection of initial profile information.

(a) The department shall send an initial profile survey to every currently or newly State licensed and registered physician in New York State which reflects all the data elements required by Public Health Law section 2995-a(1), some elements of which shall be prepared by the department using data sources other than the physician. Such initial profile survey must be completed, signed and returned by each physician to the address designated by the department on the survey and postmarked within 30 days of the date of the letter transmitting such initial profile survey to the physician.

(b) Physicians shall be given the opportunity to correct factual inaccuracies that appear in the profile. Once the department receives a physician's completed and signed initial profile survey and enters the data into the physician profile database, the department will provide to the physician a copy of his or her profile in the form to be used for public dissemination, hereafter referred to as the review copy, prior to such public dissemination. The physician shall note any corrections on the review copy and return it to the department signed and postmarked within 10 days of the date of the letter transmitting the review copy to the physician; otherwise, the department will publicly disseminate the physician's profile information as received on the physician's initial profile survey.

(c) Subsequent to receiving the physician's review copy, if returned within the time frame required by subdivision (b) of this section, the department will provide to the physician a copy of any medical malpractice information in the form to be used for public dissemination, hereafter referred to as the medical malpractice review copy. Physicians shall correct any factual inaccuracies on the medical malpractice review copy and return it to the department postmarked within 10 days of the date of the letter transmitting the medical malpractice review copy to the physician, or, in the instance where the physician has two or fewer medical malpractice settlements over the most recent 10-year period and opts to access the panel review process, shall provide additional factual clinical information pursuant to section 1000.3(b)(2)(ii) of this Part. If the physician does not respond in accordance with the timeframes set forth in this subdivision, the department will publicly disseminate the physician's medical malpractice information provided on the medical malpractice review copy.

1000.5 Updating self-reported information.

(a) Except for optional information provided on physician profiles, physicians shall notify the department of any change in profile information within 30 days of such change. Any change in optional information must be reported to the department within 365 days of such change.

(b) Physicians shall submit changes to physician profile information either electronically using the department's secure web site or on forms prescribed by the department. Physicians shall attest to the truthfulness, completeness and correctness of any changes submitted to the department.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1000.3(a)(4), (b)(2)(i)(*a*), (ii)(*a*), (*b*) and 1000.4(c).

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Although the regulation has been changed since it was published in the *State Register* on September 17, 2003, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification for Physical Therapist Assistants

I.D. No. HLT-51-03-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend section 700.2(b) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2); and L. 2002, ch. 404

Subject: Requirements of certification for physical therapist assistants and update of provisions relating to limited permits for physical therapists.

Purpose: To conform the requirements for physical therapists and physical therapy assistants in a manner that is consistent with L. 2002, ch. 404.

Text of proposed rule: Subdivision (b), paragraph (32) of section 700.2 is amended to read as follows:

(32) Physical therapist[’s] assistant shall mean an individual who [has graduated from an associate degree program for physical therapist assistants either registered by the New York State Education Department or which has received interim or final approval from the American Physical Therapy Association.] *is licensed by and currently registered with the New York State Education Department, or who has been issued a valid limited permit by that Department.* [This individual] *The assistant* must work under the supervision of a physical therapist who is licensed by and currently registered with the New York State Education Department.

Subdivision (b), paragraph (44) of section 700.2 is amended to read as follows:

(44) Physical therapist shall mean a person who is licensed by and currently registered with the New York State Education Department *or who has been issued a valid limited permit by that Department.*

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

Statutory Authority:

The authority for promulgating this regulation is contained in section 2803(2) of the Public Health Law, which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law.

Basis:

The proposed amendments merely conform the State regulation to State law as amended by Chapter 404 of the Laws of 2002. Because these amendments do not impose any burden on any party that exceeds or expands statutory requirements, a consensus regulatory adoption is appropriate.

Job Impact Statement

A Job Impact Statement is not included because the nature and purpose of these amendments make it clear that they will not have a substantial adverse impact on jobs and employment opportunities. Physical therapist assistants and physical therapists operating under limited permits now have to meet different standards in order to be employed in these titles, but these differences are attributable to the statute rather than to the proposed conforming amendments to the regulation.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Industrial Board of Appeals Records

I.D. No. LAB-51-03-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend section 73.2 of Title 12 NYCRR.

Statutory authority: Public Officers Law, art. 6; Labor Law, section 101

Subject: Location and hours for public access to Industrial Board of Appeals records.

Purpose: To update the mailing addresses listed in the State regulations.

Text of proposed rule: § 73.2. Location and hours for public access; designation of records access and fiscal officers.

(a) The following offices of the Industrial Board of Appeals are hereby designated to receive requests for information under the Freedom of Information Law:

(1) Albany
State of New York
Industrial Board of Appeals
[194 Washington Avenue] *Empire State Plaza*
Agency Building 2, 20th Floor
Albany, N.Y. [12210] *12223*

(2) New York City
State of New York
Industrial Board of Appeals
Two World Trade Center] *345 Hudson Street, 8th Floor*
New York, N.Y. [10047] *10014*

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail:USCJGB@labor.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

The existing rule was last amended in 1982, and lists the physical locations and mailing addresses for the board’s principal office, in Albany, and a local office in New York City. Neither of these offices have been located at this locations for many years. The location for the local office in New York City is listed as Two World Trade Center. The board’s offices have each moved at least twice since these addresses were first listed. This amendment will correct the listing of the board’s mailing addresses. It is not expected that anyone will object to the update and publication of the board’s current office addresses.

Job Impact Statement

This proposed amendment will not have an impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making only updates a mailing address used by the public for making F.O.I.L. requests. It is apparent from the nature and purposes of the amendment that it will not have an impact on jobs and/or employment opportunities. Because this technical amendment does not change the text nor substantively revise existing provisions governing F.O.I.L. procedures, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Tariff for Electric Service

I.D. No. LPA-51-03-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Long Island Power Authority is considering a proposal for a Green Energy Program.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Tariff for electric service.

Purpose: To adopt certain revisions to the tariff for electric service for a Green Energy Program.

Public hearing(s) will be held at: 10:00 a.m. on February 26, 2004 at Huntington Town Hall, 100 Main St., Huntington, NY; and 2:00 p.m. on February 26, 2004 at Omni Center, 333 Earle Ovington Blvd., Uniondale, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: The Long Island Power Authority (Authority) is considering a proposal to make certain revisions to its tariff for electric service. The revisions involve the institution of a Green Choice Program in which the Authority's customers may elect to purchase environmental attributes from renewable energy service providers. The Authority may approve, reject, or modify, in whole or in part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY 11553, (516) 222-7700, e-mail rkessel@lipower.org

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 5 days after the last scheduled public hearing.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Office of Mental Health

EMERGENCY RULE MAKING

Outpatient Programs

I.D. No. OMH-26-03-00008-E
Filing No. 1372
Filing date: Dec. 4, 2003
Effective date: Dec. 4, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 592 and 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.13(a)(3), 41.15(a) and 43.02(a); Social Services Law, sections 364(3) and 364-a(1); and L. 2001, ch 54 and L. 2002, ch. 54

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: These amendments allow additional deficit to be converted to supplemental reimbursement consistent with the 2001-2002 and 2002-2003 enacted State budgets. These amendments will avoid a reduction in services that would otherwise take place.

Subject: Comprehensive outpatient programs and medical assistance payment for outpatient programs.

Purpose: To allow for the conversion of net deficit financing for intensive psychiatric rehabilitation treatment (IPRT) programs and partial hospitalization programs and increase the comprehensive outpatient programs (COPs) rates and increase the community support program unit of service ceiling.

Text of emergency rule: Subdivision (a) of Section 592.3 is amended to read as follows:

(a) This Part applies to any provider of services which has been licensed to operate [a clinic treatment program for adults with mental illness and/or children with serious emotional disturbance or day treatment, continuing treatment or continuing day treatment programs,] *an outpatient mental health program* in accordance with Part [585 or] 587 of this Title and which is designated as a comprehensive outpatient program.

Subdivision (a) of Section 592.4 is amended to read as follows:

(a) Comprehensive outpatient program means a provider of services which has been licensed to operate [a clinic treatment program for adults with mental illness and/or children with serious emotional disturbance or a day treatment, continuing treatment or continuing day treatment programs for adults with mental illness] *an outpatient mental health program* in accordance with Part [585 or] 587 of Title 14 and has been annually designated by a local governmental unit to be eligible to receive supplemental medical assistance reimbursement for a specific program or specific programs under its auspice which agrees to provide the services required in this Part.

Subdivision (e) of Section 592.4 is deleted in its entirety and replaced by:

(e) Comprehensive outpatient program allocation means the maximum amount of comprehensive outpatient program reimbursement that a provider is allowed to retain in each local fiscal year.

Subdivision (a) of Section 592.7 is amended to read as follows:

(a) In order to be designated as a comprehensive outpatient program, a provider of services:

(1) shall currently be receiving or have received during local fiscal year ended in 1989 for upstate and Long Island based providers and local fiscal year ended in 1990 for New York City a State aid grant pursuant to Article 41 of the Mental Hygiene Law or supplemental reimbursement under the Medical Assistance Program pursuant to this Part; [or] *and;*

(2) shall have been designated as a comprehensive outpatient program pursuant to subdivision 592.8(j) of this Part and shall:

(i) ensure that access and admission to services is based upon service availability, and not based on an individual's ability to pay for such services;

(ii) provide priority access to adults with serious mental illness or children with serious emotional disturbance, as applicable. Each program shall establish policies and procedures to ensure priority access to such individuals;

(iii) agree to provide initial assessment services to all patients referred from inpatient or emergency settings within five business days of referral from such setting, *except that for partial hospital programs the requirement shall be within two business days;*

[(iv) agree to provide in each year at least the same percentage of visits under the medical assistance program as were provided in 1990. The local governmental unit, with the approval of the commissioner, may negotiate a different percentage with the provider if the provider shows that it will not reasonably be able to maintain the percentage of visits provided in 1990. This shall not affect the calculation of the provider's rate of reimbursement pursuant to section 592.8 of this Part;

(v) agree to provide a reasonable percentage of visits under the medical assistance program if designated on or after January 1, 1992. Such percentage shall be agreed upon annually with the local governmental unit, but in no case shall the agreed upon percentage in any local fiscal year commencing in or after 1992 be lower than the percentage served by the program in 1990. The local governmental unit, with the approval of the commissioner, may negotiate a different percentage with the provider if the provider shows that it will not reasonably be able to maintain the percentage of visits provided in 1990. This shall not affect the calculation of the provider's rate of reimbursement pursuant to section 592.8 of this Part.]

[(vi)]*(iv)* agree to engage in annual mental health planning activities with the local governmental unit;

[(vii)]*(v)* assure that services are provided to all individuals who are part of a designated geographic area or target population for whom the comprehensive outpatient program is responsible as designated in the current local government plan;

[(viii)]*(vi)* arrange for the provision of or directly provide 24 hour emergency services. For newly designated providers, this must be completed no later than 90 days from the time of designation;

[(ix)] *(vii)* develop formal agreements with all levels of inpatient care which will:

(a) assure immediate and planned patient access to inpatient services; and

(b) clearly identify responsibility for coordinating treatment and accepting responsibility for treatment and after care from the referring hospital. For newly designated providers, these agreements must be completed no later than 90 days from time of designation.

[(x)]*(viii)* directly provide or arrange for the provision of case management, home visiting services and other clinically necessary mental health services to maintain patients in programs and minimize patients' absence from treatment. For newly designated providers, this must be completed no later than 90 days from the time of designation;

[(xi)]*(ix) except for partial hospital programs,* review, at least annually, the treatment services, support services and recovery status of each patient. Such review shall be documented;

[(xii)]*(x)* submit, upon request by the Office of Mental Health or the local governmental unit, in a timely fashion and consistent with the Mental Hygiene Law, Section 33.13 *and applicable federal law* which [governs] *govern* the confidentiality of patient records, all cost, utilization, programmatic or clinical reports and/or documentation required;

[(xiii)]*(xi)* create a consumer advisory board and/or include consumers on the governing body of the program. For newly designated providers, this must be completed no later than 90 days from the time of designation; and

[(xiv)]*(xii)* develop staffing patterns which take into account the cultural and ethnic backgrounds of patients.

Subdivision (c) of Section 592.8 is amended to read as follows:

(c) The supplemental rate, for providers with at least one comprehensive outpatient program, shall be calculated as follows:

(1) For [eligible clinic, continuing day treatment and day treatment] *outpatient mental health* programs which are designated providers pursuant to this Part, grants received for the local fiscal year ended in [1995] *2001* for upstate and Long Island based providers, and for the local fiscal year ended in [1996] *2001* for New York City based providers, shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the [initial] *previous* supplemental rate.

(2) the sum of grants received by the provider, as recalculated under paragraph (1) of this subdivision, shall be divided by the projected number of annual visits to the provider's designated programs. The projected number of annual visits shall be calculated as follows:

(i) *The combined total of outpatient mental health program visits reimbursed by Medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent.* [For the purpose of this section, the projected number of annual] *These* visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare. Providers, who [for the local fiscal year ended in 1994] *in the three most recent fiscal years* earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the [local fiscal year ended in 1994] *three most recent fiscal years* and the number of dually eligible visits provided in the [federal fiscal year ended in 1994] *three most recent fiscal years.* The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the [local fiscal year ended in 1994] *three most recent fiscal years;*

[(ii) For providers whose volume of visits reimbursed by Medicaid in 1994 was greater than or equal to 110% of the number of Medicaid visits projected by the OMH for the local fiscal year ended in 1994, the projected number of annual visits shall be 90.9% of visits reimbursed by Medicaid in 1994. Providers, who for the local fiscal year ended 1994 earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of visits adjusted as set forth in subparagraph (2)(i) of this subdivision.

(iii) For providers whose volume of visits reimbursed by Medicaid in 1994 was less than 110% of the number of Medicaid visits projected by the Office of Mental Health for the local fiscal year ended in 1994, the projected number of annual visits shall be the total number of Medicaid units projected by the Office of Mental Health for the local fiscal year 1994. Providers, who for the local fiscal year ended in 1994 earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted as set forth in subparagraph (2) (i) of this subdivision;

(iv) For providers who were initially designated after April 1, 1995, the number of annual visits shall be 90.9% of visits reimbursed by Medicaid in 1994; and

[(v)]*(ii)* Rates calculated pursuant to subparagraph[s] (i) [(ii), (iii) and (iv)] of this paragraph are subject to appeal by the local governmental unit, or by the provider with the approval of the local governmental unit. Appeals pursuant to this paragraph shall be made within one year after receipt of initial notification of the most recent supplemental reimbursement rate calculation. However, under no circumstances may the recalculated rate be higher than the rate cap set forth in paragraph (3) of this subdivision.

(3) The supplemental rate for a provider operating [a licensed] *an* outpatient mental health [clinic, day treatment or continuing day treatment] program shall be the lesser of the rate calculated in paragraph (2) of this subdivision or [$100.00] *a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget,* provided, however, the supplemental rate of an Article 31 provider which operates a comprehensive outpatient program shall not be less than an amount that, when added to the base fee, yields an amount that is less than the total of the corresponding fee and supplemental reimbursement for any provider which is not eligible to be designated as comprehensive outpatient program.

Subdivision (h) of Section 592.8 is amended to read as follows:

(h) The Office of Mental Health may amend the supplemental rate *and/or the comprehensive outpatient program allocation* to account for program changes required by the Office of Mental Health, *local governmental unit,* or other administrative agency, or approved by the commissioner pursuant to Part 551 of this Title.

(1) When a provider receives reimbursement under this part which is less than its comprehensive outpatient program allocation in a local fiscal year (beginning with Calendar Year 2001 for upstate or Long Island based providers or Local Fiscal Year 2000-01 for New York City based providers), the local governmental unit may, subject to the approval of the Commissioner of the Office of Mental Health and the Director of the Division of Budget, allocate any amount of the provider's comprehensive outpatient program reimbursement which is less than its comprehensive outpatient program allocation to one or more designated comprehensive outpatient programs within the same county beginning in the following fiscal year. In making such adjusted allocations, the local governmental unit shall consider the extent to which a provider receiving an additional allocation is in compliance with the program requirements set forth in Section 592.7 of this Part. This adjusted allocation process shall be accomplished through the revision of each affected provider's comprehensive outpatient program allocations for the previous fiscal year. In no case shall such adjusted allocation be less than the amount of comprehensive outpatient program reimbursement received by a provider consistent with its applicable comprehensive outpatient program allocation received in either the 2000 local fiscal year or the local fiscal year before the year in which such reimbursement is received, which ever amount is less.

(2) When a provider closes down one or more program location, but continues to operate the other locations of the designated program the supplemental revenue to the designated program shall be reduced proportionately by the number of Medicaid visits associated with the closed locations (s). The State share of the reduced Medicaid supplemental revenue may be allocated to the county in the form of additional local assistance grants, or the visits previously reimbursed to the closed program location (s) may be added to the visits of one or more other designated outpatient programs of the same outpatient category in the same county.

Part 588 of the Regulations of the Commissioner of Mental Health is amended as follows:

Paragraph (4) of Subdivision (d) of Section 588.14 is amended as follows:

(4) Grants, as recalculated pursuant to paragraph (2) of this subdivision, shall be divided by the average annual units of service calculated pursuant to paragraph (3) of this subdivision. [In no event shall such calculation exceed $101.50.] *The community support program rate cap will be established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. OMH-26-03-00008-EP, Issue of July 2, 2003. The emergency rule will expire February 1, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law provides that the Commissioner shall have the power to adopt regulations to effectuate the provisions and purposes of Article 31.

Paragraph (3) of Section 41.13 of the Mental Hygiene Law provides that a local government shall direct and administer a local comprehensive plan for mentally disabled residents of its area.

Subdivision (a) of Section 41.15 of the Mental Hygiene Law provides that net operating costs of programs incurred pursuant to an appropriate plan and approved by the Commissioner shall be eligible for the state aid.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Sections 364(3) and 364-a(1) of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2001, the enacted budget for New York State Fiscal Year 2001-2002 and Chapter 54 of the Laws of 2002, the enacted budget for Fiscal Year 2002-2003, provide for payment, by the Office of Mental Health, of state financial assistance, net of disallowances, for community mental health programs pursuant to Article 41 and other provisions of the Mental Hygiene Law.

2. Legislative objectives: Articles 7, 31 and 41 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs, address the role of local governments and provide direction regarding state aid for local assistance.

Sections 364 and 364-a of the Social Service Law reflect the objective that the Office of Mental Health shall be responsible for establishing and maintaining standards for Medicaid reimbursed mental health programs.

Chapter 54 of the Laws of 2001, the enacted budget for New York State Fiscal Year 2001-2002, included a Medicaid initiative to reduce net deficit financing with a commensurate increase in Medicaid and no impact on gross program levels. This initiative, intended to begin on July 1, 2001, includes converting net deficit financing to Medicaid for Intensive Psychiatric Rehabilitation Programs and Partial Hospital Programs and maximizing Comprehensive Outpatient Programs (COPS) revenue by a conversion of additional net deficit financing and increasing the COPS rate cap as established by the Commissioner of Mental Health and approved by the Division of the Budget .

Chapter 54 of the Laws of 2002, the enacted budget for New York State Fiscal Year 2002-2003, provides for an increase by the Office of Mental Health to the COPS rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget and for an increase in the community support program unit of service rate cap established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. These changes are intended to begin December 1, 2002.

3. Needs and benefits: The amendments to these regulations streamline and update the COPS methodology consistent with the 2001-2002 enacted state budget; permit Intensive Psychiatric Rehabilitation Programs (IPRT) and Partial Hospitalization Programs that meet the additional requirements placed upon Comprehensive Outpatient Programs (COPS) to receive supplemental Medicaid payment; convert net deficit financing for IPRT and Partial Hospitalization programs meeting these requirements to Medicaid, in recognition of the reimbursable costs associated with COPS program requirements; and eliminate the need for yearly amendments to the COPS regulations by changing rate cap reference to a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. These changes continue to allow providers to achieve efficiencies in the operation of their outpatient treatment programs without a need for a reduction of services.

4. Costs:

a) Costs of regulated parties: Providers designated by counties as operating Comprehensive Outpatient Programs will continue to be required to achieve efficiencies in order to maintain service levels in their outpatient treatment programs. There are no costs associated with replacing additional net-deficit with supplemental Medicaid reimbursement.

b) Costs to State and Local government and the agency: Implementation of these amendments is consistent with the 2001-2002 and 2002-2003 enacted state budgets and is expected to save New York State $8,736,000 annually. This includes replacing additional deficits with supplemental Medicaid reimbursement. OMH State aid appropriations will be reduced by approximately $16,067,000 annually. Expenditures for the State share of the supplemental Medicaid reimbursement of eligible providers will total approximately $7,331,000 annually.

Implementation of these regulations is expected to save local governments $2,785,000. Local grants will be reduced by approximately $9,553,000 while expenditures for the local share of the supplemental Medicaid reimbursement of eligible providers will total approximately $6,768,000.

The above cost analysis addresses all changes to the COPS programs made to comply with the 2001-2002 and 2002-2003 enacted state budget.

The above analysis also does not include the fiscal impact of increasing the community support program rate cap from $101.50 to $104.55 as required by the 2002-2003 enacted state budget. That $3.05 rate change will increase the state share by $8,300 annually and the state wide local share by $7,600 annually.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative would have been contrary to the Legislative intent as set forth in the 2001-2002 and 2002-2003 enacted state budgets and would have resulted in reduction in services and program closures, since sufficient funding would no longer be available for existing programs. This alternative was rejected.

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after July 1, 2001. These regulations allow for an increase in the COPS rate ceiling from $100 per visit to $200 per visit effective from July 1, 2001 to November 30, 2002 and from $200 per visit to $206 per visit effective on and after December 1, 2002. They also allow for an increase in the community support program rate ceiling from $101.50 to $104.55, effective on and after December 1, 2002. This compliance schedule is consistent with the 2001-2002 and 2002-2003 enacted state budgets.

Consolidated Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Consolidated Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas Comprehensive Outpatient Program (COPS) funding for rural and other counties will not be reduced and additional flexibility regarding the funding will be available to rural and other county officials.

Consolidated Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves

adjustments to financing mechanisms for existing programs and will not have a substantial adverse impact on jobs and employment activities.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-41-03-00003-A
Filing No. 1366
Filing date: Dec. 9, 2003
Effective date: Dec. 24, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the Medicaid rate schedule associated with outpatient programs licensed under art. 31 of the Mental Hygiene Law.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-41-03-00003-EP, Issue of October 15, 2003.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Junk and Salvage Vehicles

I.D. No. MTV-51-03-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend Part 81 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 415-a(15) and 12242(2)

Subject: Junk and salvage vehicles.

Purpose: To increase the value of abandoned vehicles from $750 to $1,250 as mandated by statute.

Text of proposed rule: Subparagraph (vi) of paragraph (8) of subdivision (b) of Part 81.1 is amended to read as follows:

(vi) in the case of a vehicle eight or more model years old, and worth $[750] *1,250* dollars or less, form MV-35, signed and properly completed by the owner of the vehicle.

Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

Chapter 540 of the Laws of 2002, effective September 17, 2002, provides that a vehicle shall be deemed abandoned and immediately vest in the local authority if its value is $1,250. (This is in addition to other criteria set forth in Vehicle and Traffic Law section 1224(2)). Previously, the value of an abandoned vehicle was set at $750. This amendment merely reflects this statutorily mandated increase in the "value" of abandoned vehicles, which are frequently considered junk and salvage vehicles under the criteria set forth in Part 81.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will have no impact on job creation or development in the State.

Public Service Commission

NOTICE OF ADOPTION

Standby Service Rates by Central Hudson Gas & Electric Corporation

I.D. No. PSC-39-02-00004-A
Filing date: Dec. 4, 2003
Effective date: Dec. 4, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 02-E-1108, allowing Central Hudson Gas & Electric Corporation to amend its tariff schedule, P.S.C. No. 15—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Tariff filing by Central Hudson to establish a new standby service.

Purpose: To comply with the policies and objectives in the commission order issued Oct. 26, 2001, establishing guidelines for standby service rates.

Substance of final rule: The Commission approved the terms of a Joint Proposal for setting rates to be charged by Central Hudson Gas & Electric Corporation for standby electric delivery service to wholesale generators and to customers with on-site generation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-E-1108SA1)

NOTICE OF ADOPTION

Petitions for Rehearing and Clarification by KeySpan Energy Delivery New York, *et al.*

I.D. No. PSC-27-03-00009-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The Commission, on Sept. 17, 2003, adopted an order, in Case 02-M-0515, granting in part petitions for rehearing and clarification from KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.

Statutory authority: Public Service Law, sections 66, 67 and 72

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission adopted an order granting in part petitions for rehearing and clarification from KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, Consolidated

Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA2)

NOTICE OF ADOPTION

Distributed Generation Service—Non-Residential by Niagara Mohawk Power Corporation

I.D. No. PSC-31-03-00010-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications Niagara Mohawk Power Corporation's tariff filing establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission adopted an order approving revisions to Niagara Mohawk Power Corporation's (Niagara Mohawk) Service Classification No. 12—Distributed Generation Service-Non Residential which will institute firm delivery service for its commercial and industrial customers provided that Niagara Mohawk files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA3)

NOTICE OF ADOPTION

Gas Meters and Accessories by Corning Natural Gas Corporation

I.D. No. PSC-32-03-00011-A
Filing date: Dec. 4, 2003
Effective date: Dec. 4, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-G-0976, approving Corning Natural Gas Corporation's (Corning) request for use of the Eagle XARTU/1-VC-LDVI electronic volume corrector for commercial billing applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Types of gas meters and accessories.

Purpose: To allow Corning to utilize the Eagle XARTU/1-VC-LDVI electronic volume corrector for revenue gas billing in New York State.

Substance of final rule: The Commission authorized the utilization of the Eagle XARTU/1-VC-LDVI Electronic Volume Corrector by Corning Natural Gas Corporation for metering of natural gas customers in New York State.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-G-0976SA1)

NOTICE OF ADOPTION

Non-Residential Distributed Generation Firm Sales by Rochester Gas and Electric Corporation

I.D. No. PSC-32-03-00012-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The Commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications Rochester Gas and Electric Corporation's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to Rochester Gas and Electric Corporation's (RG&E) Gas Service – P.S.C. Nos. 16 and 17, instituting firm delivery service for commercial and industrial distributed generation customers provided that Rochester Gas files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA4)

NOTICE OF ADOPTION

Distributed Generation Service by National Fuel Gas Distribution Corporation

I.D. No. PSC-32-03-00013-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications National Fuel Gas Distribution Corporation's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to National Fuel Gas Distribution's (National Fuel) Gas Service – P.S.C. No. 8, instituting firm delivery service for commercial and industrial distributed generation customers provided that National Fuel files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA5)

NOTICE OF ADOPTION

Gas Rates for Distributed Generation Facilities by Orange and Rockland Utilities, Inc.

I.D. No. PSC-32-03-00014-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications Orange and Rockland Utilities, Inc.'s tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to Orange and Rockland Utilities, Inc.'s (Orange and Rockland) Gas Service–P.S.C. No. 4, instituting firm delivery service for commercial and industrial distributed generation customers provided that Orange and Rockland files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA6)

NOTICE OF ADOPTION

Non-Residential Distributed Generation Firm Sales Service by New York State Electric & Gas Corporation

I.D. No. PSC-32-03-00015-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications New York State Electric & Gas Corporation's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to New York State Electric & Gas Corporation's (NYSEG) schedule for Gas Service–P.S.C. No. 9, instituting firm delivery service for commercial and industrial distributed generation customers provided that NYSEG files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA7)

NOTICE OF ADOPTION

Baseload Distributed Generation Sales Service by The Brooklyn Union Gas Company

I.D. No. PSC-32-03-00016-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's (KeySpan) schedule for Gas Service–P.S.C. No. 12, instituting firm delivery service for commercial and industrial distributed generation customers provided that KeySpan files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA8)

NOTICE OF ADOPTION

Baseload Distributed Generation Sales Service by KeySpan Gas East Corporation

I.D. No. PSC-32-03-00017-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to KeySpan Gas East Corporation d/b/a Keyspan Energy Delivery Long Island's (KeySpan) schedule for Gas Service–P.S.C. No. 1, instituting firm delivery service for commercial and industrial distributed generation customers provided that KeySpan files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA9)

NOTICE OF ADOPTION

Distributed Generation Rate by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-32-03-00018-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications Consolidated Edison Company of New York's tariff filings establishing firm service for commercial and industrial distributed generation customers.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to Consolidated Edison Company of New York's (Con Edison) schedule for Gas Service–P.S.C. No. 9, instituting firm delivery service for commercial and industrial distributed generation customers provided that Con Edison files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA10)

NOTICE OF ADOPTION

Distributed Generation Commercial and Industrial by Central Hudson Gas & Electric Corporation

I.D. No. PSC-32-03-00019-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 02-M-0515, approving with modifications Central Hudson Gas & Electric Corporation's tariff filings establishing firm service for commercial and industrial distributed generation customers

Statutory authority: Public Service Law, section 66(12)

Subject: Gas transportation rates for distributed generation technologies.

Purpose: To comply with the commission's April 24, 2003 order.

Substance of final rule: The Commission approved tariff amendments to Central Hudson Gas & Electric Corporation's (Central Hudson) schedule for Gas Service–P.S.C. No. 12, instituting firm delivery service for commercial and industrial distributed generation customers provided that Central Hudson files further tariff revisions, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-M-0515SA11)

NOTICE OF ADOPTION

Pro-Ration of Consolidated Bills by Consolidated Edison Company of New York, Inc., *et al.*

I.D. No. PSC-34-03-00018-A
Filing date: Dec. 5, 2003
Effective date: Dec. 5, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order, in Case 03-M-0117 denying in part and granting in part petitions for rehearing and clarification of its June 20, 2003 order relating to implementation of L. 2002, ch. 686.

Statutory authority: Public Service Law, sections 30-53, 65 and 66(12)

Subject: Petitions for rehearing and clarification of the commission's June 20, 2003 order.

Purpose: To ensure that the current automated systems used by social services to service special needs or vulnerable customers are not disrupted by the implementation of chapter 686.

Substance of final rule: The Commission denied in part and granted in part petitions for rehearing and clarification of the Commission's June 20, 2003 Order establishing general guidelines for the implementation of Chapter 686 of the Laws of 2002 and a general policy on pro-ration of consolidated bills, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-M-0117SA2)

NOTICE OF ADOPTION

Change in Ownership by Global Common Greenport, LLC

I.D. No. PSC-37-03-00012-A
Filing date: Dec. 3, 2003
Effective date: Dec. 3, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1180, approving the transfer of ownership interests in Global Common Greenport, LLC (now Hawkeye Energy Greenport, LLC) from Hawkeye Electric, LLC to WJH Holding, LLC and William J. Haugland.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests

Purpose: To complete an overall corporate reorganization.

Substance of final rule: The Commission authorized the transfer of all ownership interests in Global Common Greenport, LLC (now Hawkeye Energy Greenport, LLC) from Hawkeye Electric, LLC to WJH Holding, LLC and William J. Haugland.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1180SA1)

NOTICE OF ADOPTION

Request for Approval of Utility Billing Meters by Electro Industries

I.D. No. PSC-38-03-00013-A
Filing date: Dec. 5, 2003
Effective date: Dec. 5, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1131, allowing Electro Industries to use the Nexus 1260/1262/1270/1272 high performance utility billing meters.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of utility billing meters.

Purpose: To use new meters in monitoring energy, load profiling and communications.

Substance of final rule: The Commission approved a request by Electro Industries to utilize the Nexus Models 1260/1262/1270/1272 High Performance Utility Billing Meters for revenue metering and billing applications in New York State.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1131SA1)

NOTICE OF ADOPTION

Approval of Encompass kV2c Line Electronic Meters by General Electric Company

I.D. No. PSC-38-03-00014-A
Filing date: Dec. 5, 2003
Effective date: Dec. 5, 2003

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1144, allowing General Electric Company to use the Encompass kV2c line of electronic meters.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electronic meters.

Purpose: To better serve today's competitive customer with increased functionality and enhanced data security features.

Substance of final rule: The Commission approved a request by General Electric Company to utilize the GE Encompass kV2c multifunctional meter line for revenue metering and billing applications in New York State.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(03-E-1144SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Joint Proposal by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-51-03-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is examining the prudence of Consolidated Edison Company of New York, Inc.'s (Con Edison) management and oversight of its former Indian Point Unit 2 Nuclear Generating Facility (IP2) from 1985 to 2001, and is considering whether to approve, reject, or modify, in whole or in part, a joint proposal entered into among the parties that would settle the disputed issues in the proceeding.

Statutory authority: Public Service Law, sections 5(b), (c), 65 and 66

Subject: Consideration of a joint proposal that would address the prudence of Con Edison's operation of IP2 and related matters.

Purpose: To consider the reasonableness of Con Edison's management and operation of IP2 from 1985 to 2001.

Substance of proposed rule: The Public Service Commission is examining the prudence of Consolidated Edison Company of New York, Inc.'s (Con Edison) management and oversight of its former Indian Point Unit 2 Nuclear Generating Facility (IP2) during the period 1985 to 2001. The parties to the proceeding have entered into a joint proposal that recommends resolving the disputed issues in the proceeding for $137,500,000 in benefits to Con Edison's customers. Therefore, the Commission is considering whether to approve, reject, or modify, in whole or in part, that Joint Proposal. The Commission is expected to determine the fairness of the proposed resolution, the appropriateness of the manner in which the ratepayer benefits will be provided, and other related issues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(00-E-0612SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

General Retail Access—Multi-Retailer Model by Rochester Gas and Electric Corporation

I.D. No. PSC-51-03-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its electric tariff schedules, P.S.C. Nos. 18 and 19, to transition its electric tariffs to a multi-retailer model from a single-retailer model.

Statutory authority: Public Service Law, section 66(12)

Subject: General retail access—multi-retailer model.

Purpose: To transition electric tariffs to a multi-retailer model from a single-retailer model.

Substance of proposed rule: Rochester Gas and Electric Corporation proposes to transition its electric tariff schedules, P.S.C. No. 18 and P.S.C. No. 19, to a multi-retailer model from a single-retailer model.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-E-0198SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standardized Interconnection Requirements

I.D. No. PSC-51-03-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering proposed amendments to the New York State standardized interconnection requirements, application process, contract and application forms for new distributed generators, 300kVA or less, connected in parallel with radial distribution lines, dated Aug. 5, 2003.

Statutory authority: Public Service Law, section 66 (12)

Subject: Standardized interconnection requirements.

Purpose: To increase the upper threshold capacity to 2MW and include network distribution systems.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, proposed amendments to the New York State Standardized Interconnection Requirements for New Distributed Generators, 300 kVA or less, Connected in Parallel With Radial Distribution Lines dated August 5, 2003. The proposed amendments are set forth in a document on file with the Commission entitled Proposed Amendments to the Standardized Interconnection Requirements dated October 2003, and posted on the Commission's website at www.dpds.state.ny.us/distgen.htm. The proposed changes consist of those revisions necessary to increase the upper capacity threshold from 300 kVA to 2MW, and to allow for the inclusion of netowrk distribution systems in the requirements. Specific proposals include defining minimum functions for protective devices and further delineation of the requirements for the installation of synchronous generators, along with additional editorial revisions. The other major modification is the elimination of the current type testing process in favor of a reference to compliance with Underwiter's Laboratories 1741, Inverters, Converters and Controllers for Use in Independent Power Systems.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-E-1282SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interests by UtilCo Group Inc., *et al.*

I.D. No. PSC-51-03-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, or modify a joint petition filed by UtilCo Group Inc., MEP Holdings, Inc. MEP Investments, LLC (Sellers), and Teton Power Funding, LLC (Purchaser) for approval of the transfer of ownership interests from sellers to purchasers.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in entities that own two New York power generating facilities, and related matters.

Purpose: To consider the transfer.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject proposed transfers of: (i) 100% of the partnership interests in Onondaga Cogeneration Limited Partnership ("OCLP"), a lightly regulated "electric corporation" that owns and operates a 91 MW dual fuel, combined-cycle merchant energy facility in Geddes, Onondaga County, New York; and (ii) a 13.55% limited partnership interest in Selkirk Cogen Partners, L.P. ("SCP"), which owns and operates the 345 MW Selkirk Cogeneration Project in Selkirk, Albany, County, New York. The Selkirk Cogeneration Project operates as a "qualifying Cogeneration facility" under the Public Utility Regulatory Policies Act ("PURPA"). The transfers would result from the closing of a purchase and sales agreement among Petitioners Teton Power Funding, LLC ("Purchaser"). Sellers, the upstream owners of the ownership interests described above, are indirect wholly-owned subsidiaries of Aquila, Inc., a mid-west utility and global energy company. Purchaser is wholly-owned by ArcLight Energy partner Fund I, a private equity investment fund with interest in various power generation projects. The Commission is also considering Petitioners' request for a declaratory ruling that the proposed transfer of the 13.55% limited partnership interest in SCP does not trigger Commission jurisdiction under PSL § 70, on the ground that PURPA preempts Commission approval authority under PSL § 70. The request for a declaratory ruling is not rulemaking. See State Administrative Procedure Act §§ 102 (2)(a), 102(2)(b)(iii), and 204. Lastly, the Commission is also considering whether to waive the filing requirements set forth in 16 NYCRR 31.1(a), (c), (d) and (f)-(l) as well as the filing requirements set forth in 16 NYCRR 39.1(a)-(c).

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-1694SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interruptible Gas Rates by St. Lawrence Gas

I.D. No. PSC-51-03-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission will consider exempting St. Lawrence Gas from the Nov. 4, 2003 order concerning interruptible gas sales and transportation service. St. Lawrence Gas has been exempt from previous orders relating to this case

Statutory authority: Public Service Law, sections 66(12), 67 and 72

Subject: Interruptible gas rates.

Purpose: To provide an exemption for St. Lawrence Gas from the Nov. 4, 2003 order.

Substance of proposed rule: The Commission will consider exempting St. Lawrence Gas from the November 4, 2003 Order Concerning Interruptible Gas Sales and Transportation Service. St. Lawrence Gas has been exempt from previous orders relating to this case.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(00-G-0996SA7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

General Retail Access—Multi-Retailer Model by Rochester Gas and Electric Corporation

I.D. No. PSC-51-03-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its gas tariff schedule, P.S.C. No. 16, to transition its gas tariff to a multi-retailer model from a single-retailer model.

Statutory authority: Public Service Law, section 66(12)

Subject: General retail access—multi-retailer model.

Purpose: To transition the gas tariff to a multi-retailer model from a single-retailer model.

Substance of proposed rule: Rochester Gas and Electric Corporation proposes to transition its gas tariff schedule, P.S.C. No. 16, to a multi-retailer model from a single-retailer model.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(02-G-0199SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Filing Requirements in Article VII Proceedings by Conjunction, LLC

I.D. No. PSC-51-03-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Consideration of a request by Conjunction, LLC for waivers of 16 NYCRR sections 86.3(a)(1)(i), (ii) and (iii), (2), (b)(1)(iv) and 86.8 and 86.10(a) and (b)

Statutory authority: Public Service Law, section 122

Subject: Filing requirements in article VII proceedings concerning corridor mapping; locations of permanent clearance of or changes to topography, vegetation, and structures; locations of archaeological resources and sceinic, park, and wilderness areas; source of maps; locations of structures to be built; locations of utility facilities; aerial photographs; local ordinances; and project costs.

Purpose: To insure the environmental compatibility of the proposed facility.

Substance of proposed rule: The Commission is considering an application by Conjunction, LLC for a Certificate of Environmental Compatibility and Public Need pursuant to Article VII of the Public Service Law to construct 2000 megawatt high voltage direct current electric transmission circuits between (1) an interconnection with the 345 kilovolt Gilboa-Leeds alternating current transmission line in the Town of Athens, Greene County and an interconnection with Consolidated Edison Company of New York, Inc.'s (Con Edison) 345 kilovolt Rainey substation; and (2) an interconnection with the 345 kilovolt New Scotland-Alps alternating current transmission line in the town of Coeymans, Albany County and an interconnection with Con Edison's 345 kilovolt 49th Street substation. In that application, Conjunction, LLC asks for waivers of requirements set forth in 16 NYCRR § 86.3(a)(1)(i), (ii), and (iii); § 86.3(a)(2); § 86.3(a)(2)(iv); § 86.3(b)(2); § 86.8; and § 86.10(a) and (b). Conjunction, LLC also requests permission, pursuant to 16 NYCRR § 85-2.3(c), to provide information at a later date.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-T-1641SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Long Term Main Renewal Program by United Water New Rochelle Inc.

I.D. No. PSC-51-03-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a proposal filed by United Water New Rochelle Inc. (UWNR), to extend its Long Term Main Renewal Program established in commission Opinion No. 00-10, issued Aug. 21, 2000 in Case 99-W-0948

Statutory authority: Public Service Law, section 89-c(10)

Subject: Long Term Main Renewal Program.

Purpose: To extend the program.

Substance of proposed rule: On December 2, 2003, United Water New Rochelle Inc. filed a petition to extend for a two-year period its Long Term Main Renewal Program. The program was established by Commission Opinion No. 001-10, issued August 21, 2000 in Case 99-W-0948. The company requests authorization to recover a total investment of up to $4,000,000 for the two-year period, starting January 1, 2004 through December 31, 2005. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-W-1146SA2)