

RULE REVIEW

PUBLIC SERVICE COMMISSION

NOTICE OF CONTINUATION OF RULES

CASE 01-M-1806 – In the Matter of the Review of Existing Commission Rules and Regulations Pursuant to the State Administrative Procedure Act, Section 207.

MEMORANDUM AND RESOLUTION
(Issued and Effective October 28, 2003)

BY THE COMMISSION:

Pursuant to State Administrative Procedure Act (SAPA) §207, we published a Notice of Proposed Continuation of Rules adopted in 1998 in the *State Register's* Regulatory Agenda on January 8, 2003. No comments were received on the rules.

We hereby issue a follow-up Notice of Continuation, as required by SAPA §207(4), for four of the five rules adopted in 1998:

1. 16 NYCRR Parts 10 and 255 (Gas Transportation).
2. 16 NYCRR Parts 1002 and 1003 (State Pollutant Permit Requirements and Compliance Filings).
3. 16 NYCRR Part 11 (HEFPA).
4. 16 NYCRR Parts 21, 642 and 644 (Certificate procedure and requirements for telephone corporations) will continue. Part 603 was revised in 2000 and will be reviewed in 2005.

The fifth rule, 16 NYCRR Part 262 (drug and alcohol testing for pipeline operators), was amended in 1999 and will be reviewed in 2004.

The provisions of Section 207 of the State Administrative Procedure Act having been complied with, the Acting Secretary shall file this Memorandum and Resolution with the Secretary of State.

RESOLUTION BY THE COMMISSION

Statutory Authority

State Administrative Procedure Act, Section 207(4)

CASE 01-M-1806 – In the Matter of the Review of Existing Commission Rules and Regulations Pursuant to the State Administrative Procedure Act, Section 207.

At a session of the Public Service Commission held in the City of Albany on October 22, 2003, the Commission by unanimous vote of its members present,

RESOLVED:

1. That the provisions of Section 207 of the State Administrative Procedure Act having been complied with, a Notice of Continuation of Rules, attached hereto, listing rules adopted in 1998 which were reviewed by the Commission, is hereby issued for publication in the *State Register*.
2. The Acting Secretary is directed to file a copy of this resolution and Notice of Continuation of Rules with the Secretary of State.

Pursuant to Section 207 of the State Administrative Procedure Act, on November 26, 2002, the Commission issued a Notice of Proposed Continuation of Rules, which was published in the Regulatory Agenda of the New York State Register on January 8, 2003.

The following rules should continue without modification:

1. 16 NYCRR Parts 10 and 255, Transmission and Distribution of Gas.

The Part 10 rule updates references to the most recent edition of industry standards for pipeline safety. Part 255 exempts from the rule any pipeline that transports only petroleum gas or petroleum gas/air mixture to (i) fewer than 10 customers, if no portion of the system is located in a public place; or (ii) a single customer, if the system is located entirely on the customer's premises. The rules conform to federal safety regulations.

Statutory authority:

Public Service Law (PSL) §66(1) and (2).

Justification for continuation of rule:

The rules should continue without modification because they conform to federal gas safety regulations. Exempting certain pipelines from the Commission's rules does not compromise safety. The rules have resulted in significant cost savings to the utilities and should continue. No comments were received on the rules.

2. 16 NYCRR Parts 1002 and 1003, State Pollutant Permit Requirements and Compliance Filing.

The rules are part of the requirements and procedures of the New York State Board on Electric Generation Siting and the Environment (Siting Board). Part 1002, State Pollutant Permit Requirements and Procedures, sets out the procedure for a federal permit program under the Federal Clean Water Act for renewal of a discharge permit. The rule will be necessary if the Siting Board receives delegated authority from the U.S. Environmental Protection Agency (EPA) for this program. Part 1003, Compliance Filings, sets out filing procedures required before facility construction may begin.

Statutory authority:

PSL §§161, 164(7) and 168(2) were effective until January 1, 2003. Under Laws of 1992, Ch. 519, §16, and Laws of 1999, Ch. 636, §18, the law remains in effect for Article X applications filed before January 1, 2003.

Justification for continuation of the rules:

The rules provide some procedures for the Siting Board, which has ongoing responsibilities for applications filed before January 1, 2003. The rules are needed to allow the Siting Board to continue its operations. No comments were received on the rules.

3. 16 NYCRR Part 11, Home Energy Fair Practices Act Rules (HEFPA).

The HEFPA rule relates to consumer protections for residential utility service customers.

Statutory authority:

PSL §§4.1, 30 through 51, 66(1) and 80(1).

Justification for continuation of rule:

The Home Energy Fair Practice Act, which is part of the PSL, was modified in 2002. Therefore, the HEFPA rule is being modified. The existing rule should remain in effect until the new rule is adopted. No comments were received on the rule.

4. 16 NYCRR Parts 21, 603, 642 and 644 – Certificate procedures and requirements for telephone corporations.

The rules relate to certificate requirements for telephone corporations. Parts 21, 642 and 644 will continue without change. Part 603 was repealed and a new Part 603 was adopted on October 25, 2002. Part 603 will be reviewed in 2007.

Statutory authority: PSL §§ 4(1) and 94(2).

Justification for continuation of the rules:

Competitive telephone corporations are exempted from some procedural and filing requirements of the Commission because such corporations are lightly regulated. Before the rules, such corporations were routinely granted waivers from the procedural and filing requirements, which were deemed unnecessary for their regulation. The corporations continue to be lightly regulated and these requirements continue to be unnecessary for their regulation. Therefore, the rules should continue without modification. No comments were received on the rules.