

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.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-19-04-00003-E
Filing No. 1112
Filing date: Sept. 27, 2004
Effective date: Sept. 27, 2004

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

Action taken: Amendment of section 40.1(f) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0340-b, 13-0340-e and 13-0340-f

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

Specific reasons underlying the finding of necessity: Pursuant to § 13-0371 of the Environmental Conservation Law, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are

designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission. ASMFC recently amended the FMPs for summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. In order to maintain compliance with the FMPs and ACFCMA, states are required to immediately implement these changes by amending their recreational fishing regulations for each of these species.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming its regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to timely adopt revised 2004 regulations may result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder, scup and/or black sea bass in New York State, with significant adverse impacts to the state's economy. New York's projected harvests for summer flounder and scup in 2004 exceed the state's assigned quotas by 48.5% and 58%, respectively. The regulatory changes in this emergency rule are calculated to bring New York into compliance.

On April 23, 2004 the Department adopted emergency regulations intended to comply with the ASMFC 2004 requirements for summer flounder, scup and black sea bass. The ASMFC approved the regulations for scup. This emergency rule includes those approved regulations that achieve a 58% reduction for scup for 2004.

However, on June 17, 2004, the ASMFC determined that New York's emergency regulations for summer flounder were not in compliance with the requirements to achieve a 48.5% reduction. On July 19, 2004 the U.S. Secretary of Commerce determined that the summer flounder regulations did not comply with the ASMFC requirements. Accordingly the Secretary of Commerce sent a letter to Governor George Pataki notifying him of that decision and establishing a date certain when a moratorium would be placed on commercial and recreational summer flounder fishing in New York. In order to achieve compliance and to prevent a federal closure of the commercial and recreational summer fishery in New York, the Department is adopting emergency regulations which establish an open season for fluke from May 15 to September 6, a daily limit of three (3) summer flounder, and an increase in the minimum length for summer flounder from 17 inches to 18 inches. The Department has revised its proposed rule to include these same provisions.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. Under the FMP for the black sea bass, a single coastwide regime of size limits, possession limits and seasons is annually established by ASMFC. For 2004, a revised season closure for a two-week period in September and for the month of December was established. On April 23, 2004, the Department adopted emergency regulations to close an equivalent period in September/October. However, the ASMFC determined that New York must revise its closure period to specifically conform to the September 7 to September 22 and December 1 to 31 period in order to comply with the FMP, and that unless New York has come into compliance by August 1, a non-compliance determination will be forwarded to the Secretary of Commerce pursuant to ACFCMA. Therefore, in order to achieve compliance and prevent a federal closure of the black sea bass fishery in New York, the Department is adopting emergency regulations which establish the specific black sea bass season closure periods necessary to comply with the FMP. The Department has revised its proposed rule to include these same provisions.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure.

Subject: Regulation of the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) in New York's marine district.

Purpose: To control the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) consistent with conservation requirements identified in regional FMPs.

Text of emergency rule: Section 40.1(f) is amended as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	28" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	21" TL	No limit
Atlantic cod	All year	23" TL	No limit
Summer flounder	[All year] May 15 - Sept. 6	[17"] 18" TL	[7] 3
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	21" TL	No limit
		14" Tail Length #	
Weakfish	All year	16" TL 10" Fillet length+ 12"Dressed length**	6
Bluefish	All year	No minimum size limit	10
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov 30	11" TL	15
Scup (porgy)	[All year] June 16 - Oct. 17 and Nov. 1 - Nov. 30	[10"] 11" TL	[50] 20
Black Sea Bass	[Jan 1 -Sept. [1] 7 and Sept. [16] 22 - Nov 30]	12"	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Large & Small Coastal Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###

Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks ***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

++Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

***Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

###Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205-S North Belle Meade Road, East Setauket, New York 11733.

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. ENV-19-04-00003-EP, Issue of May 12, 2004. The emergency rule will expire November 25, 2004.

Revised rule making(s) were previously published in the State Register on August 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, Bureau of Marine Resources, 205 S. North Belle Meade Rd., East Setauket, NY 11733, (631) 444-0435, e-mail: amweber@gw.dec.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Section 13-0340-b, 13-0340-e and 13-0340-f authorize the Department of Environmental Conservation (DEC or Department) to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

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The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure.

The text of the revised rulemaking and the emergency regulations adopted herein include the following items:

Summer Flounder

Implement an open season of May 15 to September 6 for the summer flounder recreational fishery. The current fishing season for summer flounder is open year-round. Lower the recreational possession limit from 7 fish per person per trip to 3 fish per person per trip. Increase the recreational minimum size limit from 17 to 18 inches total length.

Scup

Implement an open season from June 16 through October 17 and November 1 through November 30 for the scup recreational fishery. The current fishing season for scup in New York is open year round. Lower the recreational possession limit from 50 fish per person per trip to 20 fish per person per trip. Increase the recreational minimum size limit from the current 10 inches to 11 inches total length.

Black sea bass

Implement an open season for black sea bass from January 1 through September 7 and from September 23 through November 30 for the recreational black sea bass fishery. The current open fishing season for black sea bass is from January 1 through September 1 and from September 16 through November 30.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action. Certain regulated parties (Party/charter vessels, Bait and tackle shops) may experience some adverse economic effects through lost economic opportunities.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules. The implementation costs will be associated with the public notification and final adoption of these regulations, and costs relating to the expense of updating informational materials and notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

There will also be additional costs associated with enforcement of these new regulations.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following alternatives have been considered by the Department and rejected for the reasons set forth below:

(1) Do not amend Part 40.

Failing to make required changes to summer flounder, black sea bass and scup recreational regulations would place New York in a position of non-compliance with an ASMFC/Regional Council FMPs, and thus subject all New York fishermen, including commercial fishermen, to a federal moratorium on fishing for that species. This would cause more serious negative economic impacts on the regional economy. New York is currently in that position with summer flounder pursuant to the Secretary of Commerce's determination that New York is out of compliance with the summer flounder FMP. A letter stating that fact has been sent to Governor Pataki. This letter provides a date certain when a moratorium will be placed on the commercial and recreational summer flounder fishery.

9. Federal standards:

These amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs for summer flounder, scup and black sea bass.

10. Compliance schedule:

The regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of the regulations:

There were 496 licensed party/charter vessels operating in New York during 2003 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2003. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. The regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. This may result in a lower number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season. However, over the long term, these short term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected under these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

The annual cost of continuing compliance may take the form of lost income if the sales of marine bait fish or tackle declines or if fewer fishermen take trips aboard marine party and charter vessels. Some of the proposed regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. It is not known if fishermen will take fewer trips or if they will purchase less bait and tackle as a result of the shorter seasons, higher size limits or lower possession limits, or if they will instead re-direct their fishing effort towards other species.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question including party and charter vessels, as well as wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

5. Minimizing adverse impact:

The purpose to these regulations is to constrain the recreational harvest of these species by reducing the length of the fishing season, increasing minimum size limits and lowering possession limits for recreational fishermen. Since these regulatory amendments are required under federal and interstate fishery management plans, the Department has little discretion regarding adverse impacts. New York must comply with the provisions of the FMPs or face federal sanctions and the imposition of a total closure of the fishery for summer flounder, scup and/or black sea bass in New York State, with significant adverse impacts to the state's economy.

Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ASMFC recently amended the FMPs for summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. In order to maintain compliance with the FMPs and ACFCMA, states are required to immediately implement these changes by amending their recreational fishing regulations for each of these species.

Therefore, in order to prevent imposition of a federal closure for the recreational and commercial fisheries for these species and the economic hardship that would be associated with such closures, this emergency rule adopts the specific measures necessary to comply with the FMPs.

The impact of these regulations has been minimized to the extent possible, by adjusting and coordinating fishing seasons to maintain recreational fishing opportunities for some species when others are closed, and by implementing season closure and size and possession limit options throughout the marine district that will not unduly affect some fishing modes and geographic areas more than others.

Ultimately, the maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail outlets and other support industries for recreational fisheries. The purpose of the

rule is to constrain harvest of these species to allow the stocks to rebuild to higher sustainable levels. There is no means to eliminate the potential for short term economic losses while attempting to rebuild over harvested stocks of fish. Failing to take these appropriate actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Regulations are proposed which provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The development of this proposal has drawn upon input from recreational fishermen, recreational fishing industry representatives and the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon consultation with and recommendations received from other interested and affected parties, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners and state law enforcement personnel. There was no special effort to contact local governments because the rule does not affect them.

7. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for the majority of the affected parties. For those proposals which are required under federal and interstate fishery management plans, the Department does not have any discretion regarding this economic impact. New York must comply with the provisions of the FMPs or face Federal sanctions.

There is no additional technology required for small businesses, and this action does not apply to local governments, so there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup and black sea bass fisheries directly affected by the emergency rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the emergency rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the emergency amendments to Part 40, the Department has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department of Environmental Conservation (Department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

There were 496 licensed party/charter vessels operating in New York during 2003 and an unknown number of retail and wholesale marine bait and tackle shop businesses operating in New York in 2003. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. The regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. This may result in a lower number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season.

The purpose of these regulations is to constrain the harvest of certain marine fish species to reduce fishing mortality and rebuild stock biomass. The potential short term impact of these regulations may be that some recreational party and charter boat owners experience short term reductions in customers, and bait and tackle businesses could lose sales revenue from a decline in bait and tackle sales during the fishing season. It is possible that some jobs and employment opportunities associated with party and charter boat operations or bait and tackle businesses could be lost as a result of the restrictions imposed by the proposed regulations. However, based on outreach with members of the recreational fluke, scup and black sea bass fisheries, the Department does not anticipate that there will be any substantial loss of jobs as a result of the proposed changes. Moreover, in the long term, the effect of this proposed rule on jobs and employment opportunities will be positive. Protection of the fluke, scup and black sea bass fisheries is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries.

The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat owners and operators, wholesale and retail bait and tackle

outlets and other support industries for recreational fisheries. Over the long term, these short term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect stocks from continued over-harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the collapse of a stock which would have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Based on the above and Department staff's knowledge and past experience with the adoption of finfish rules similar to those contained in this proposal, the Department has concluded that there will not be any substantial adverse impact on jobs or employment opportunities as a consequence of these amendments.

Assessment of Public Comment

A proposal to amend Part 40 of 6 NYCRR, New York's marine recreational finfish regulations, was published in the New York *State Register* on May 12, 2004. A revised proposal was published in the New York *State Register* on August 18, 2004. The revised proposal included an increase in the recreational minimum size limit for summer flounder and a change to the recreational fishing season for black sea bass. A press release describing the changes was mailed to sport fishing organizations, media contacts, and other interested parties.

During the public comment period for the revised proposal, 12 written comments were received by the Department. Those comments are addressed in the summary below.

Comments: The Department received twelve written comments that addressed the revised proposal for the recreational summer flounder regulations. There were no specific comments received on the revised proposal for the black sea bass regulations.

The Department received comments from a representative of a recreational party and charter boat association, a recreational fishing organization, the owner of a motel and marina, and a local Chamber of Commerce. In addition, comments were received from individual recreational anglers. All the letters were written in opposition to the proposed change for summer flounder, specifically objecting to the proposed increase in minimum size limit. Several of those offering comment indicated that the proposed regulations would have significant economic effects on their own business or on other marine related industries. These letters indicated that the economic effect would include a loss of income associated with fewer customers for party and charter boat fisheries, loss of sales revenue for wholesale and retail bait and tackle businesses, loss of motel bookings, restaurant and retail business income, marina and ramp boat fees, tourist dollars, and an accompanying loss of jobs.

Department Response: Pursuant to Environmental Conservation Law (ECL) Section 13-0340-b, the Department is required to adopt regulations which are consistent with the compliance requirements of the interstate fishery management plan (FMP) for summer flounder. The FMPs are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state achieves compliance with the FMP.

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On April 23, 2004 the Department adopted emergency regulations intended to comply with the ASMFC 2004 requirements for summer flounder, scup and black sea bass. The ASMFC approved the regulations for scup.

However, on June 17, 2004, the ASMFC determined that New York's emergency regulations for summer flounder were not in compliance with the requirements to achieve a 48.5% reduction. On July 19, 2004 the U.S. Secretary of Commerce determined that the summer flounder regulations did not comply with the ASMFC requirements. Accordingly the Secretary of Commerce sent a letter to Governor George Pataki notifying him of that decision and establishing a date certain when a moratorium would be placed on commercial and recreational summer flounder fishing in New York. In order to achieve compliance and to prevent a federal closure of the commercial and recreational summer fishery in New York, the Department is adopting emergency regulations which establish an open season for fluke from May 15 to September 6, a daily limit of three (3) summer flounder, and an increase in the minimum length for summer flounder from 17 inches to 18 inches. The Department has revised its proposed rule, which appeared in the May 12, 2004 issue of the *State Register*, to include these same provisions.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. Under the FMP for the black sea bass, a single coastwide regime of size limits, possession limits and seasons is annually established by ASMFC. For 2004, a revised season closure for a two-week period in September and for the month of December was established. On April 23, 2004, the Department adopted emergency regulations to close an equivalent period in September/October. However, the ASMFC determined that New York must revise its closure period to specifically conform to the September 7 to September 21 and December 1 to 31 period in order to comply with the FMP, and that unless New York came into compliance by August 1, a non-compliance determination would be forwarded to the Secretary of Commerce pursuant to ACFCMA. Therefore, in order to achieve compliance and prevent a federal closure of the black sea bass fishery in New York, the Department is adopting emergency regulations which establish the specific black sea bass season closure periods necessary to comply with the FMP. The Department has also revised its proposed rule, which appeared in the May 12, 2004 issue of the *State Register*, to include these same provisions.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMP for summer flounder and to avoid closure of this fishery and the economic hardship that would be associated with such closure.

NOTICE OF ADOPTION

Consumer Products

I.D. No. ENV-29-04-00008-A

Filing No. 1104

Filing date: Sept. 22, 2004

Effective date: 30 days after filing

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

Action taken: Amendment of sections 235-2.1(er), (fa), 235-4.1(h) and 235-6.1(a) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301 and 19-0305

Subject: Consumer products.

Purpose: To correct a typographical error.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-29-04-00008-P, Issue of July 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Daniel S. Brinsko, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, e-mail: dsbrinsk@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Permits and Certificates

I.D. No. ENV-29-04-00009-A

Filing No. 1103

Filing date: Sept. 22, 2004

Effective date: 30 days after filing

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

Action taken: Amendment of Part 201 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 19-0311 and 70-0109; United States Code, section 7661(b)

Subject: Permits and certificates.

Purpose: To correct a conflict.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-29-04-00009-P, Issue of July 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John Henkes, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, e-mail: jlhenkes@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Conformity to State or Federal Implementation Plans

I.D. No. ENV-29-04-00010-A

Filing No. 1105

Filing date: Sept. 22, 2004

Effective date: 30 days after filing

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

Action taken: Amendment of sections 200.9, 240.6(c)(1)(i), 240.17(a) and (b), 240.23(a)(6), (b)(1), (3), 240.27 and 240.28 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301, and 19-0303

Subject: Conformity to State or Federal implementation plans of transportation plans programs, and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Laws.

Purpose: To correct typographical errors.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-29-04-00010-P, Issue of July 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: John Kent, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, e-mail: jwKent@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Control of Emissions of Non-Methane Organic Compounds (NMOC) from Municipal Solid Waste (MSW) Landfills

I.D. No. ENV-29-04-00011-A

Filing No. 1102

Filing date: Sept. 22, 2004

Effective date: 30 days after filing

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

Action taken: Amendment of section 208.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301, 19-0303 and 19-0305

Subject: Control of emissions of non-methane organic compounds (nmoc) from municipal solid waste (msw) landfills.

Purpose: To correct an error made when Part 208 was promulgated.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-29-04-00011-P, Issue of July 21, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Thomas R. Christoffel, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3254, (518) 402-8401, e-mail: trchrist@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Archery Season for White-Tailed Deer in Suffolk and Westchester Counties

I.D. No. ENV-32-04-00010-A

Filing No. 1113

Filing date: Sept. 28, 2004

Effective date: Oct. 13, 2004

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

Action taken: Amendment of section 1.29 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0903

Subject: Archery season for white-tailed deer in Suffolk and Westchester Counties.

Purpose: To adjust the open season dates for hunting white-tailed deer to better match deer population status, hunter desires and agricultural and community desires.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-32-04-00010-P, Issue of August 11, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatc@gw.dec.state.ny.us

Assessment of Public Comment

The Department of Environmental Conservation (Department) received comments on the proposed amendments to the Westchester County archery season.

Comments in support: Comments were received from the membership of the Westchester Bowhunter's Association, as well as other bowhunters, strongly supporting the Department's proposal to expand the archery hunting season for white-tailed deer in Westchester County. These bowhunters stated that they support the change because it will provide them with more hunting opportunity, and will contribute to the effective management of the deer herd to the benefit of land owners.

Department response: The Department agrees that the proposal will offer the noted benefits.

Comments in opposition: A few bowhunters expressed concern that an earlier opening date will have mostly negative consequences. These included increasing conflicts between bowhunters and other outdoor users, reducing the number of breeding bucks, and reducing hunting activity in adjacent counties where the season currently opens on October 15th. Other comments and concerns offered by persons who wrote to oppose the earlier opening date included: deer/vehicle collisions will increase; hunting will not help to reduce the number of ticks carrying Lyme disease; bowhunting will not reduce the deer herd; the reproductive rate of a hunted deer population is higher than it would be if not hunted; bowhunting is cruel; the Department of Environmental Conservation should implement a long-term non-lethal management program (e.g., including use of repellents, fencing, planting of unpalatable plants, use of reflective lighting).

Department response: At the present time, bowhunting is the only lawful and cost effective means of controlling the deer population in Westchester County. A two week extension of the bowhunting season, as proposed by the Department, will provide additional opportunity for bowhunters to harvest one or more deer. The Department strongly supports bowhunting for deer, and where hunting is limited to this method, it is important to provide incentives such as long seasons to achieve an increased harvest. In 2001, the Department lengthened the bowhunting season on Long Island by one month, moving the opening date from November 1st to October 1st. Long Island's bowhunting environment is similar to Westchester County's in terms of deer and human densities. The Department anticipates that the effects of the proposed earlier opening in Westchester County will be very similar to the effects observed on Long Island

after the earlier hunting season was established. The potential negative effects of deer hunting expressed by persons who commented on the Department's proposed rule, as summarized above, were not observed on Long Island when the archery season was extended there in 2001. However, the bowhunting harvest of deer on Long Island did increase from 677 in 2000 to 759 in 2003 (+12%), two years after the lengthening of the season. The Department's proposal in Westchester County is intended to also increase the bowhunting harvest of deer in an effort to lessen conflicts between deer and people. At the same time, it will provide equity in bowhunting opportunity in Westchester County at a level comparable to all other parts of the Southern Zone hunting area.

After considering all of the comments received concerning this proposed rulemaking, the Department has determined that the proposed regulation should be adopted.

NOTICE OF ADOPTION

Harvest of White-Tailed Deer with Muzzleloading Firearms in the Northern Zone

I.D. No. ENV-32-04-00011-A

Filing No. 1114

Filing date: Sept. 28, 2004

Effective date: Oct. 13, 2004

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

Action taken: Amendment of section 1.22 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0907

Subject: Harvest of white-tailed deer with muzzleloading firearms in the Northern Zone.

Purpose: To adjust the muzzleloading deer hunting regulations in response to changing deer populations as a result of milder winter weather. These adjustments will better match deer hunting opportunities with deer population status, hunter satisfaction, and agricultural and community desires.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-32-04-00011-P, Issue of August 11, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

records under N.Y.C.R.R. Part 2601. The current regulations are outdated because they, inter alia, do not designate the correct designated records access officer and list written records access forms which are not used by the corporation. A summary of these express terms is as follows:

1) Proposed new section 2601.1 designates the Director of Corporate Communications as the corporation's records access officer.

2) Proposed new section 2601.2 eliminates Room 538 from the location of the records access officer.

3) Section 2601.3 concerning requests by news media for employment records is repealed.

4) Section 2601.4 concerns requests for other public records and eliminates Room 538 as the locations for requests for access and review of public records.

5) Section 2601.5 eliminates Room 538 from the inspection and copying location.

6) Section 2601.6 concerning charges for records adds language in the first sentence to read, "or the actual cost of producing the record if it is greater will be made."

7) Section 2601.7 concerning forms is repealed.

8) Section 2601.8 concerns procedures for denial of access to records by the corporation.

9) Section 2601.9 concerns descriptions of records to be provided by the requesting party.

10) Section 2601.10 concerns acknowledgement of a receipt of a request for records by the corporation.

11) Section 2601.11 concerns the corporation's failure to respond to a request for records.

12) Section 2601.12 concerns the timing and content for appealing the corporation's denial of access to records.

13) Section 2601.13 concerns the transmittal of appeals to the Committee on Open Government and informing it of its decision with regard to appeals.

14) Section 2601.14 concerns where the person requesting record should file their appeal.

15) Section 2601.15 concerns subject matter files of the corporation.

The corporation has determined that this is a consensus rule making under SAPA Section 202(1)(b)(i) and, therefore, no person is likely to object to the rule as written.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 2601.6.

Text of rule and any required statements and analyses may be obtained from: Jeffrey M. Lanigan, Environmental Facilities Corporation, 625 Broadway, 7th Fl., Albany, NY 12207-2997, (518) 402-6963, e-mail: Lanigan@nysefc.org

Revised Job Impact Statement

The nonsubstantive change referenced in Section 6 of the Notice of Adoption changing the first sentence to read: "A minimum charge of twenty five cents per page or the actual cost of producing the record if it is greater will be made," will not have any adverse impact on jobs and employment opportunities and will have no substantive change on the Statement of No Adverse Impact on Jobs or Employment Opportunities set forth in the Notice of Proposed Rulemaking previously filed with the Department of State.

Assessment of Public Comment

The agency received no public comment.

Environmental Facilities Corporation

NOTICE OF ADOPTION

Access to Public Records Law

I.D. No. EFC-11-04-00026-A

Filing No. 1011

Filing date: Sept. 21, 2004

Effective date: Oct. 13, 2004

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

Action taken: Repeal of Part 2601 and addition of new Part 2601 to Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87

Subject: Access to Public Records Law.

Purpose: To amend and repeal outdated information and make the EFC regulations more consistent with the New York State Freedom of Information Law (FOIL).

Substance of final rule: The proposed rules establish new procedures for the New York State Environmental Facilities Corporation (the "corporation") in connection with responding to requests for access to public

Power Authority of the State of New York

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Rates for the Sale of Certain Power and Energy

I.D. No. PAS-41-04-00006-P

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

Proposed action: Revision in rates for the sale of firm power to governmental customers located primarily in New York City.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of certain power and energy.

Purpose: To recover the authority's cost of providing firm power and energy services.

Substance of proposed rule: GOVERNMENTAL CUSTOMERS
2005 PROPOSED CONVENTIONAL PRODUCTION RATES****

Service Class	Demand Rates \$/kW-mo.	Base Energy Rates Cents/kWh*
62 General Small	**	8.765
64 Commercial & Industrial Redistribution	11.95	4.511
65 Electric Traction Systems	8.82	5.207
85s NYC Transit Authority Substation	9.83	4.794
66 Westchester Street Lighting	**	5.413***
68/82 Multiple Dwellings Redistribution	10.56	4.654
69 General Large	8.72	4.874
80 NYC Street Lighting	9.61	4.640
91/93/98 NYC Public Buildings	8.91	5.158

* In addition to the base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.

** Service classes 62 and 66 do not have demand metering. Accordingly, the base energy rates reflect total demand as well as energy-related costs.

*** No change from current rates.

**** Proposed increases as allowed by contract.

GOVERNMENTAL CUSTOMERS
2005 PROPOSED TIME-OF-DAY PRODUCTION RATES

Service Class	Demand Rates \$/kW-mo.	On-Peak Base Energy Rates Cents/kWh*	Off-Peak Base Energy Rates Cents/kWh*
64 Commercial & Industrial Redistribution	9.82	6.505	3.598
68/82 Multiple Dwellings Redistribution	9.47	6.725	3.683
69 General Large	7.21	6.955	3.623
91/93/98 NYC Public Buildings	7.30	7.469	3.651

Notes:

(1) The on-peak period for demand is weekdays from 8 AM to 6 PM, including holidays.

(2) The on-peak period for energy is weekdays from 8 AM to 10 PM, including holidays.

(3) The off-peak period for demand and energy is all other hours.

(4) Demand rates apply to peak demand occurring during the on-peak period.

(5) In addition to the indicated energy rates, the stabilized energy charge adjustment is applied on a monthly basis.

(6) Proposed increases as allowed by contact.

Interested parties may receive documentation concerning the rate proposal and the relevant resolution of the Authority's Board of Trustees from the Secretary of the Authority at the address and phone number set forth below.

Secretary's Office
New York Power Authority
123 Main Street, 15-M
White Plains, New York 10601
Phone: (914) 287-3092

Text of proposed rule and any required statements and analyses may be obtained from: Angela D. Graves, New York Power Authority, 123 Main St., 15th Fl., White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Rates for the Sale of Certain Power and Energy

I.D. No. PAS-41-04-00007-P

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

Proposed action: Revision of firm demand charge for the Blenheim-Gilboa Pumped Storage Power Project.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of certain power and energy.

Purpose: To maintain the system's fiscal integrity.

Substance of proposed rule: Pursuant to the New York State Public Authorities Law, Section 1005(6), the Power Authority of the State of New York (the "Authority") proposes to increase the firm demand charges for its Blenheim-Gilboa Pumped Storage Project as set forth in Service Tariff No. 40 from \$2.30/kW-month to \$3.92/kW-month

Copies of Service Tariff No. 40 may be inspected at the Authority's office at the address below and at other designated locations, or obtained from the address below.

Written comments on the proposed firm demand charge revision will be accepted through Monday, November 29, 2004, at the address below. For further information, including the address of other Authority offices at which copies of Service Tariff No. 40 may be inspected, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK

Angela D. Graves, Deputy Secretary
123 Main Street
White Plains, New York 10601
(914) 287-3092
(914) 681-6949 (fax)
angela.graves@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Angela D. Graves, New York Power Authority, 123 Main St., 15th Fl., White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

NOTICE OF ADOPTION

Renewable Sources of Electricity

I.D. No. PSC-09-03-00011-A

Filing date: Sept. 24, 2004

Effective date: Sept. 24, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-E-0188 regarding a renewable portfolio standard program for retail customers in New York State.

Statutory authority: Public Service Law, sections 5(2) and 66(2)

Subject: Development of renewable sources of energy.

Purpose: To increase the proportion of renewable energy consumed by retail customers in New York State.

Substance of final rule: The Commission adopted a renewable portfolio standard program designed to increase the percentage of renewable generation-derived electricity used by retail customers in New York State from the current level of 19.3 percent to at least 24 percent and it is anticipated that an additional one percent of renewable energy sales will result from voluntary green marketing programs. Therefore, at least 25 percent of the energy used in New York State will be provided by renewable sources of electricity, 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-E-0118SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Albanese Development Corporation

I.D. No. PSC-17-04-00019-A

Filing date: Sept. 23, 2004

Effective date: Sept. 23, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 01-E-0819 allowing Albanese Development Corporation to submeter electricity at Site 18B, North End Ave., Battery Park City, New York, NY.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve the submetering of electricity to residential rental units.

Substance of final rule: The Commission authorized Albanese Development Corporation to submeter electricity at Site 18B, North End Avenue, Battery Park City, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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. (01-E-0819SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Hudson Waterfront Company A, LLC

I.D. No. PSC-18-04-00006-A

Filing date: Sept. 27, 2004

Effective date: Sept. 27, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-E-0843 allowing Hudson Waterfront Company A, LLC to submeter electricity at 240 Riverside Blvd., New York, NY.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve the submetering of electricity to residential tenants.

Substance of final rule: The Commission authorized Hudson Waterfront Company A, LLC to submeter electricity at a newly constructed master-metered residential condominium located at 240 Riverside Boulevard, New York, New York, in the territory of Consolidated Edison Company of New York, Inc.

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.

(04-E-0483SA1)

NOTICE OF ADOPTION

Initial Tariff Schedule by National Aqueous Corporation

I.D. No. PSC-24-04-00008-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in case 04-W-0641, allowing National Aqueous Corporation (NAC) to amend its tariff schedule, P.S.C. No. 1 — Water, with the exception of First Revised Leaf No. 12.

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

Subject: Electronic tariff.

Purpose: To set forth the initial rates, charges, rules and regulations under which National Aqueous Corporation will operate.

Substance of final rule: The Commission approved amendments to the non-rate increase portion of National Aqueous Corporation's (NAC) electronic tariff and authorized NAC to establish an Escrow Account with a funding level of \$20,000, to become effective October 1, 2004, 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.

(04-W-0641SA1)

NOTICE OF ADOPTION

Major Gas Rate Increase by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-25-04-00017-A

Filing date: Sept. 27, 2004

Effective date: Sept. 27, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-G-1671 adopting the terms of a joint proposal by Consolidated Edison Company of New York, Inc. (Con Edison), Department of Public Service staff and other parties concerning Con Edison's gas rate plan.

Statutory authority: Public Service Law, sections 5(b), 32, 53, 65 and 66

Subject: Major rate increase.

Purpose: To establish a viable market structure that offers retail customers competitive choices for their energy needs and provide safe and reliable gas service to customers.

Substance of final rule: The Commission adopted the terms and provisions of the Joint Proposal authorizing an increase in Consolidated Edison Company of New York, Inc.'s gas delivery rates by \$46.8 million or about 7.5% to take effect in October 2004 and remain frozen at that level for the next three years. In addition, the Joint Proposal contains provisions addressing competitive retail access program, energy efficiency programs and revisions to gas safety performance measures and other related matter, 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-G-1671SA2)

NOTICE OF ADOPTION

Low Income Rate Programs and Competitive Market Programs

I.D. No. PSC-25-04-00019-A

Filing date: Sept. 28, 2004

Effective date: Sept. 28, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-G-0718 directing National Fuel Gas Distribution Corporation (NFGD) to continue certain low income and competitive market rate plan programs.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), (5), 66(1), (4), (5), (10), (12), 71 and 72

Subject: Low income programs and competitive market programs.

Purpose: To maintain four programs scheduled to expire at the conclusion of National Fuel Gas Distribution Corporation's rate plan on Sept. 30, 2004.

Substance of final rule: The Commission directed National Fuel Gas Distribution Corporation (NFGD) to continue the Low Income Residential Assistance Program, Elderly, Blind and disabled Program, the Competition Backout Credit and competition Outreach and Education Program, 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. (04-G-0718SA1)

NOTICE OF ADOPTION

Major Steam Rate Increase by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-25-04-00020-A

Filing date: Sept. 27, 2004

Effective date: Sept. 27, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-S-1672 adopting the terms of a joint proposal by Consolidated Edison Company of New York, Inc. (Con Edison), Department of Public Service staff and other parties concerning Con Edison's steam rate plan.

Statutory authority: Public Service Law, sections 5(c), 79 and 80

Subject: Major rate increase.

Purpose: To promote steam business by providing reduced rates to customers who may otherwise use other types of energy and provide customers with safe and adequate steam service.

Substance of final rule: The Commission adopted the terms and provisions of the Joint Proposal authorizing a two-year rate plan to increase Consolidated Edison Company of New York, Inc.'s (Con Edison) steam rates by \$49.6 million in October 2004 and by \$27.4 million in October 2005. In addition, the Joint Proposal contains provisions addressing implementation of an economic development plan, establishment of a Steam Business Development Task Force, development of an Energy Infrastructure Master Plan, an investment-grade study of the long-term steam production alternatives available to Con Edison and other related matters, 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-S-1672SA2)

NOTICE OF ADOPTION

Competitive Backout Credit by National Fuel Gas Distribution Corporation

I.D. No. PSC-26-04-00006-A

Filing date: Sept. 28, 2004

Effective date: Sept. 28, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 00-G-1858 denying the revisions to National Fuel Gas Distribution Corporation's (NFGD) schedule for gas service—P.S.C. No. 8.

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

Subject: Competition backout credit.

Purpose: To cancel amendments that remove the Low Income Assistance Program and competition backout credit.

Substance of final rule: The Commission denied National Fuel Gas Distribution Corporation's (NFGD) request to remove S.C. No. 19 – Supplier Transportation, Balancing and Aggregation and S.C. No. 2 – Low Income Residential Assistance Service from its gas tariff, P.S.C. No. 8 and directed NFGD to cancel, effective no later than September 30, 2004, on not less than one day's notice, its proposed 13th Revised Leaf No. 3, 5th Revised Leaf No. 152, 6th Revised Leaf No. 153, 8th Revised Leaf No. 154, 4th Revised Leaf No. 155 and 8th Revised Leaf No. 271.

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. (00-G-1858SA6)

NOTICE OF ADOPTION

Street Lighting by New York State Electric & Gas Corporation

I.D. No. PSC-27-04-00019-A

Filing date: Sept. 27, 2004

Effective date: Sept. 27, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 02-E-1061 allowing New York State Electric & Gas Corporation (NYSEG) to modify its schedule for electric service, P.S.C. No. 121.

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

Subject: Tariff filing by New York State Electric & Gas Corporation.

Purpose: To amend street lighting tariff provisions.

Substance of final rule: The Commission approved revisions to New York State Electric & Gas Corporation's electric street lighting tariff schedule, P.S.C. No. 121 – Electricity, to ensure proper street lighting billing and expeditious responses to requests by customers for equipment changes.

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-1061SA1)

NOTICE OF ADOPTION

Fuel Adjustment Clause by the City of Jamestown

I.D. No. PSC-27-04-00023-A

Filing date: Sept. 24, 2004

Effective date: Sept. 24, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-E-0746 approving revisions to the City of Jamestown Board of Public Utilities' (City of Jamestown) tariff schedule, P.S.C. No. 6—Electricity.

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

Subject: Tariff filing by the City of Jamestown.

Purpose: To revise the fuel adjustment clause.

Substance of final rule: The Commission authorized the City of Jamestown Board of Public Utilities to amend its Fuel Adjustment Clause to include in the cost of fuel and purchased power, the cost of acquiring environmental allowances and the cost of any environmental fees paid to federal, regional, State of New York or local agencies related to the operation of its generating plants.

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. (04-E-0746SA1)

NOTICE OF ADOPTION

Transfer, Financing and Lightened Regulation by Great Lakes Power, Inc.

I.D. No. PSC-28-04-00008-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-E-0789 approving a joint petition by Orion Power Holdings, Inc. and Great Lakes Power, Inc. for the transfer of ownership of a cogeneration facility and a hydroelectric generation facility owned by Reliant's

Orion subsidiary to Brascan's Great Lakes subsidiary and for lightened regulation and financing.

Statutory authority: Public Service Law, sections 2(13), 5(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Sale of Erie Boulevard Hydro Power, L.P. and Carr Street Generating Station, L.P.

Purpose: To authorize the transfer of ownership interests, provide lightened regulation and approve financing transactions.

Substance of final rule: The Commission approved a joint petition by Orion Power Holdings, Inc. and Great Lakes Power, Inc. for the transfer of ownership of 102 MW in one combined-cycle cogeneration facility and 674 MW in 72 hydroelectric generation facilities and granted lightened regulation and financing of up to \$730 million related to the transfer, 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. (04-E-0789SA1)

NOTICE OF ADOPTION

Discontinuance of Bill Credit by National Fuel Gas Distribution Corporation

I.D. No. PSC-28-04-00009-A

Filing date: Sept. 28, 2004

Effective date: Sept. 28, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 00-G-1858 denying the petition of National Fuel Gas Distribution Corporation (NFGD) for the discontinuance of a \$5 million customer bill credit.

Statutory authority: Public Service Law, sections 4(1), 5(1), 65(1) and 66(12)

Subject: Discontinuance of bill credit.

Purpose: To cancel tariff amendments.

Substance of final rule: The Commission denied National Fuel Gas Distribution Corporation's (NFGD) request to discontinue an annual \$5 million customer bill credit established in its rate plan and directed NFGD to cancel the tariff amendments that terminate this bill credit.

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. (00-G-1858SA7)

NOTICE OF ADOPTION

Design of Gas Rates to Full Service and Transportation Customers by New York State Electric & Gas Corporation

I.D. No. PSC-29-04-00004-A

Filing date: Sept. 23, 2004

Effective date: Sept. 23, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 01-G-1668 approving the terms of a joint proposal regarding the redesign of New York State Electric & Gas Corporation's gas delivery rates.

Statutory authority: Public Service Law, sections 5(1)(b), 43, 65(1) and 66

Subject: Design of gas rates to full service and transportation customers.

Purpose: To adopt the terms set forth in a joint proposal concerning rate design, economic development plans and affordable energy program.

Substance of final rule: The Commission adopted the terms of a Joint Proposal concerning changes in the design of the gas rates charged by New York State Electric & Gas Corporation (NYSEG) to its full service and transportation customers. The Joint Proposal recommends a redesign of gas delivery rates to phase out, over four to five years, an economic development plan, revisions to NYSEG's economic development tariffs and the continuation of NYSEG's gas Affordable Energy Program at the present funding levels, 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.

(01-G-1668SA5)

NOTICE OF ADOPTION

Design Delivery Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-29-04-00005-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-G-0799 approving revisions to KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's (KeySpan) tariff schedule, P.S.C. No. 1—Gas.

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

Subject: Design delivery service.

Purpose: To remove all of KeySpan's design delivery service provisions from its tariff schedule.

Substance of final rule: The Commission authorized KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to eliminate S.C. No. 5 – Firm Transportation Service and S.C. No. 8 – Seller Service from its Schedule for Gas Service – P.S.C. No. 1

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.

(04-G-0779SA1)

NOTICE OF ADOPTION

Comprehensive Transportation and Balancing Service by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-29-04-00006-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-G-0800 approving revisions to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's (Brooklyn Union) tariff schedule, P.S.C. No. 12—Gas.

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

Subject: Comprehensive transportation and balancing service.

Purpose: To remove all of Brooklyn Union's design delivery service provisions from its tariff schedule.

Substance of final rule: The Commission authorized The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to eliminate S.C. No. 16—Comprehensive Transportation and Balancing Service from its Gas Tariff Schedule – P.S.C. No. 12.

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.

(04-G-0800SA1)

NOTICE OF ADOPTION

Business Incentive Rate Program by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-30-04-00005-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-G-0797 approving modifications to KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's (KeySpan) tariff schedule, P.S.C. No. 1—Gas.

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

Subject: Business Incentive Rate Program.

Purpose: To extend the program for an additional three years.

Substance of final rule: The Commission approved a tariff filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to extend the availability period of its Business Incentive Rate program through September 30, 2007.

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.

(04-G-0797SA1)

NOTICE OF ADOPTION

Commodity Pricing Option Enrollments by Rochester Gas and Electric Corporation

I.D. No. PSC-31-04-00020-A

Filing date: Sept. 22, 2004

Effective date: Sept. 22, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 03-E-0765 approving amendments to Rochester Gas and Electric Corporation’s electric tariff schedule, P.S.C. No. 19.

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

Subject: Compliance filing by Rochester Gas and Electric Corporation.

Purpose: To set forth the rules and procedures for changing commodity pricing options during the commodity rate period.

Substance of final rule: The Commission approved amendments to Rochester Gas and Electric Corporation’s electric tariff schedules to unbundle rates and provide customers with four commodity options in compliance with the Commission’s Order Adopting Provisions of Joint Proposals with Conditions issued May 20, 2004.

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-0765SA3)

NOTICE OF ADOPTION

Lightened Regulation by Bethpage Energy Center 3, LLC

I.D. No. PSC-31-04-00022-A

Filing date: Sept. 23, 2004

Effective date: Sept. 23, 2004

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

Action taken: The commission, on Sept. 22, 2004, adopted an order in Case 04-E-0884 granting Bethpage Energy Center 3, LLC (Bethpage 3) lightened regulation and additional project financing.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Lightened regulation.

Purpose: To provide lightened regulation and authorize a financing transaction.

Substance of final rule: The Commission approved Bethpage Energy Center 3, LLC’s (Bethpage 3) request for lightened regulation as an electric corporation and granted Bethpage 3 an additional \$55 for project financing, 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.

(04-E-0884A1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Economic Development by the Massena Electric Department

I.D. No. PSC-41-04-00001-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 considering whether to approve or reject, in whole or in part, a proposal filed by the Massena Electric Department to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2 to become effective Jan. 1, 2005.

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

Subject: Economic development.

Purpose: To implement an economic development program for industrial and commercial customers.

Substance of proposed rule: The Massena Electric Department made a tariff filing for approval to implement Rider 1 - an economic development program for industrial and commercial customers. The intention of Rider 1 is to attract new customers and encourage existing customers to expand their businesses in upstate New York.

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. Brillig, 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.

(04-E-1143SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Net Lost Revenues by National Fuel Gas Distribution Corporation

I.D. No. PSC-41-04-00002-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, or modify, a petition filed by National Fuel Gas Distribution Corporation for permission to recover net lost revenues resulting from the billing back out credit to energy service companies.

Statutory authority: Public Service Law, section 66

Subject: Net lost revenues.

Purpose: To recover net lost revenues resulting from the billing back out credit to energy service companies.

Substance of proposed rule: On September 23, 2004, National Fuel Gas Distribution Corporation (NFG) filed a petition requesting permission to recover net lost revenues resulting from the billing back out credit to Energy Service Companies, pursuant to the terms of the Joint Proposal to achieve a comprehensive restructuring of the Rates and Services of NFG, approved by the Commission on April 22, 2002 in Case 00-G-1858, and the Joint Proposal to extend terms of Rate Plans approved by the Commission on September 18, 2003 in Case 00-G-1858. 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. Brillig, 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.
(04-G-1138SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Pole Attachments by Fibertech Networks, LLC and Cable Telecommunications Association of New York, Inc.

I.D. No. PSC-41-04-00003-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 whether to approve or reject, in whole or in part, petitions for clarification and/or reconsideration of its Aug. 6, 2004 order adopting policy statement on pole attachments, filed by Fibertech Networks, LLC (Fibertech) on Sept. 7, 2004 and filed by the Cable Telecommunications Association of New York, Inc. (CTANY) on Sept. 7, 2004, with an addendum filed on Sept. 24, 2004.

Statutory authority: Public Service Law, sections 66(1), 94(2) and 119-a

Subject: Petitions for clarification and reconsideration.

Purpose: To consider the petitions regarding pole attachments.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, petitions for clarification and/or reconsideration of its August 6, 2004 Order Adopting Policy Statement on Pole Attachments, filed by Fibertech Networks, LLC (Fibertech) on September 7, 2004 and filed by the Cable Telecommunications Association of New York, Inc. (CTANY) on September 7, 2004, with an addendum filed on September 24, 2004.

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. Brillling, 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-M-0432SA3)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Transfer of Certain Real Property by New York State Electric & Gas Corporation

I.D. No. PSC-41-04-00004-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, in whole or in part, or modify, a petition filed by New York State Electric & Gas Corporation for approval of the sale of portions of its Kents Falls, Mill C and Cadyville properties to New England Waste Services of New York, Inc.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain real property.

Purpose: To permit New York State Electric and Gas Corporation to transfer certain real property to New England Waste Services of New York Inc.

Substance of proposed rule: On September 14, 2004, New York State Electric and Gas Corporation (NYSEG) filed a petition, pursuant to Public Service Law Section 70, requesting authorization to transfer certain real property (the Property) to New England Waste Services of New York, Inc., for \$150,000. The Property contains 101.027 acres and is a portion of 575 acres acquired from Eastern New York Power Corporation in 1953. As of September 2004, the net book value of the Property is \$109,000. Pursuant

to Section 70 of the Public Service Law, the petition was filed because the original cost of the Property exceeds \$100,000.

The public Service Commission is considering whether to grant or to reject, in whole, or in part or modify, NYSEG's petition.

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. Brillling, 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.

(04-M-1119SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Transfer of Franchises or Stocks by Mt. Ebo Water Works, Inc. and Mt. Ebo Associates, Inc.

I.D. No. PSC-41-04-00005-P

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

Proposed action: The commission is considering the joint petition of Mt. Ebo Water Works, Inc. and Mt. Ebo Associates, Inc. for approval of Mt. Ebo Associates, Inc. to acquire all the outstanding common stock of Mt. Ebo Water Works, Inc.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of franchises or stocks.

Purpose: To allow Mt. Ebo Associates, Inc. to purchase the stock of Mt. Ebo Water Works, Inc.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the joint petition by Mt. Ebo Water Works, Inc. and Mt. Ebo Associates, Inc. requesting authorization for Mt. Ebo Associates, Inc. to acquire all of the outstanding common stock of Mt. Ebo Water Works, Inc.

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. Brillling, 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.

(04-W-1075SA1)

Racing and Wagering Board

NOTICE OF ADOPTION

Rules of Bingo

I.D. No. RWB-25-04-00003-A

Filing No. 1111

Filing date: Sept. 24, 2004

Effective date: Oct. 13, 2004

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

Action taken: Amendment of sections 5800.1, 5812.9, 5814.15, 5821.18 and Parts 5815, 5820 and 5822 of Title 9 NYCRR.

Statutory authority: Executive Law, art. 19-B, section 435(1)(a)

Subject: Rules of bingo.

Purpose: To better clarify and instruct, permit and conduct new games, offer new prizes, and remove antiquated and unnecessary restrictions, including but not limited to items such as: eliminating the restrictions on games offering bonus prizes, increase fees to bookkeepers, allow sales of bingo cards in packages, approve tiered bingo games with tiered prize amounts, eliminate the requirements for an assistant caller where a video camera and monitors are used, and approve use of multi-colored bingo balls.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-25-04-00003-P, Issue of June 23, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Mark A. Stuart, Assistant Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453-8460, e-mail: info@racing.state.ny.us

Assessment of Public Comment

The Board received the following comments during the proposed rulemaking public comment period:

1. An e-mail of June 9, 2004 from Dan Plonka, editor of Bingo Caller Magazine in Rochester, New York. Mr. Plonka supports the amendments, specifically the new bingo games, and the "fair market value/no gifts" rule.

2. An e-mail of July 8, 2004 from Carolyn J. Carlos, an employee of Ed Jecusco, Inc a licensed bingo and games of chance supplier. Mrs. Carlos specifically supports the adoption of new bingo games.

3. A letter of June 20, 2004 from Elaine Michaelson, a member of Young Israel of Coram, a license authorized organization for the conduct of bingo. Ms. Michaelson objects to Board Rule 5820.7, which prohibits a member-in-charge of a bingo occasion from also serving as a paid bookkeeper of bingo records.

4. A letter of August 4, 2004 from Heather Bennett on behalf of Lancaster Bingo Company, Inc. LBC, which requested that "1. Language be added to (Section) 5815.11 to state that the provision does not apply to sales of bingo suppliers on credit terms; 2. Language be added to (Sections) 5815.20 and 5820.42 to clarify that these provisions shall not prohibit special occasional sale pricing of bingo products."

SUMMARY AND ANALYSIS OF THE ISSUES RAISED

The comments submitted by Mr. Plonka and Mrs. Carlos were in support of the proposed rule amendments and did not require further analysis.

The comment submitted by Ms. Michaelson referred to a portion of Board Rule 5820.7 that was not the subject of the proposed rulemaking. The proposed amendments to Board Rule 5820.7 would add language to allow volunteer and professional bookkeepers that maintain bingo records to offer their services to affiliate organizations of parent organizations. The proposed amendments to Board Rule 5820.7 would also raise the maximum allowable fees for professional bookkeepers and accountants who maintain bingo records.

The section of Board Rule 5820.7 that Ms. Michaelson referred to states "Bookkeepers and accountants receiving compensation for their services shall not participate or assist in any capacity in the conduct of the games." The proposed rulemaking would not amend this language. This prohibition against bingo workers from serving as professional bookkeepers has been in effect since 1962 and is mandated by Article I, Section 9 of the New York State Constitution and the Bingo Licensing Law, which prohibits any person conducting or assisting on the conduct of bingo from being remunerated. Since the section of Board Rule 5820.7 which Ms. Michaelson refers is not a part of the proposed rulemaking, no significant alternatives were considered.

The comments submitted by Lancaster Bingo Company, Inc. were reviewed by Board staff, which discussed the recommendation that "language be added to (Sections) 5815.20 and 5820.42 to clarify that these provisions shall not prohibit special occasional sale pricing of bingo products." The two amendments state, "A licensed supplier shall not agree to or sell or distribute bingo supplies or equipment at less than fair market value."

The amendments to incorporate the language "A licensed supplier shall not agree to or sell or distribute bingo supplies or equipment at less than fair market value" into Board Rules 5815.20 and 5820.42 was necessitated by certain practices of licensed suppliers who have essentially circumvented the Board's rule that prohibits licensed suppliers from making gifts and donations to licensed authorized organization by offering products for

unreasonably low prices and monopolizing business. The new rule would close that loophole by requiring prices that are reasonably tied to the fair market value of the item sold.

For instance, a bingo supplier may be prohibited from giving a free box of bingo daubers worth \$50 with every box of bingo paper sold, so the supplier would sell the \$50 box of daubers for \$1 - far below the market value of the box of daubers. Such transactions are objectionable gifts between charities and for-profit suppliers insofar as the constitutional prohibitions against the commercialization of bingo. In order to keep commercial interests clearly separate from charitable interests and ensure a level sales base for all suppliers, all transactions between a bingo supplier and bingo organization should be at arm's length, free from any act or appearance of special benefit, treatment or obligation. Gifts and other special arrangements between a commercial supplier and a charitable organization risks creating express or implied obligations between the two. The exchange of \$1 - or some other unreasonably low price unrelated to the actual cost of the product - is a gift masquerading as a sale. By requiring that a fair market value be assigned to items, the charitable organization can complete a sale through payment alone, secure in the fact that the sale is complete and no additional obligations are outstanding, allowing them the freedom to compare prices and get the best value possible.

The proposed rulemaking would add the following underlined language to Board Rule 5815.11: "No person who is directly or indirectly connected with the manufacture, sale or distribution of bingo equipment or supplies or his agents, servants or employees shall conduct, participate, advise or assist in the conduct of bingo, [or] render any service or give or loan money or anything of value, whether directly or indirectly to a commercial lessor, agent or representative, or to anyone conducting, participating or assisting in the conduct of bingo, or prepare any form pertaining to bingo." As previously stated, the basis for this rule can be traced back to Article I Section 9 of the New York State Constitution, which directs that bingo game be regulated so as to discourage commercialization. In order to keep commercial interests clearly separate from charitable interests, all transactions between a bingo supplier and bingo organization should be at arm's length, free from any act or appearance of special benefit, treatment or obligation. Gifts of money or loaning of money from a commercial entity such as a lessor or bingo supplier creates a merging of interests between charitable and commercial entities and must be prohibited.

SIGNIFICANT ALTERNATIVES SUGGESTED

The Board considered the recommendation that language be added to (Section) 5815.11 to state that the provision does not apply to sales of bingo suppliers on credit terms:

The Board also considered that language be added to (Sections) 5815.20 and 5820.42 to clarify that these provisions shall not prohibit special occasional sale pricing of bingo products.

A STATEMENT OF THE REASONS WHY ANY SIGNIFICANT ALTERNATIVES WERE NOT INCORPORATED

Regarding Lancaster Bingo's request, the amendments to add the language "A licensed supplier shall not agree to or sell or distribute bingo supplies or equipment at less than fair market value" does not apply to sale items so long as the sale price is reasonably related to the cost of the product, and offered at a similar terms to all other customers. Therefore, no modification of the proposed language is necessary.

Board staff also considered the recommendation by Lancaster Bingo that language be added to (Section) 5815.11 to state that the provision does not apply to sales of bingo suppliers on credit terms. The recommendation was rejected because the rule does not apply to credit sales. The Board considers such credit transactions sales, and not loans, but we must reserve the right to examine the conditions of each transaction on a case-by-case basis. Therefore, we cannot adopt a rule providing a "blanket determination" that the terms of a purchase agreement can never constitute a loan.

The type of loan prohibited by the rule are those loans not involving clear terms of sale. Contrast an open-ended loan of money with that of a credit sale, whereby an arm's length transaction is conducted and future payment terms are agreed upon by both parties. The benefit provided is the delivery of goods (in this instance, bingo supplies) and payment terms over time are permitted. This sort of credit sale is different from the situation where a bingo supplier loans money to a bingo worker or bingo organization and the loan lacks any sale of goods. Under such an agreement, the organization is beholden to the supplier, and the supplier enjoys an unfair advantage over competing businesses. So long as the credit sale involves clear payment terms, and the sale involves bingo supplies sold at fair market value, then the credit sale is not considered a loan for the purposes

of Board Rule 5815.11. For this reason, this significant alternative is unnecessary and therefore was not incorporated.

A DESCRIPTION OF ANY CHANGES MADE AS A RESULT OF SUCH COMMENTS

No changes were made as a result of the comments.

Department of Taxation and Finance

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Taxation and Finance publishes a new notice of proposed rule making in the *NYS Register*.

Sales on Indian Reservations

I.D. No.	Proposed	Expiration Date
TAF-38-03-00017-P	September 24, 2003	September 23, 2004

Department of Transportation

NOTICE OF ADOPTION

Safety of Operations and Equipment by Motor Carriers

I.D. No. TRN-22-04-00004-A

Filing No. 1116

Filing date: Sept. 27, 2004

Effective date: 60 days after publication in the State Register

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

Action taken: Repeal of Parts 507, 819, 820, 822, 824 and section 845.3; and addition of new Part 820 and section 845.3 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14, 14-f, 138(2), 140, 143 and 145; and Vehicle and Traffic Law, art. 19-B

Subject: Safety of operations and equipment by motor carriers.

Purpose: To provide consistency, regarding commercial motor vehicles and operational requirements for drivers involved in commerce, with the standards and requirements of the Code of Federal Regulations that have been incorporated by reference and to provide clearer language to describe what is required to better preserve public safety.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-22-04-00004-P, Issue of June 2, 2004.

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

Text of rule and any required statements and analyses may be obtained from: William Leonard, Department of Transportation, Passenger and Freight Safety Division, POD 53, 50 Wolf Rd., Albany, NY 12232, (518) 457-2019, e-mail: wleonard@dot.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Crossing Charge Schedule

I.D. No. TBA-41-04-00008-P

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

Proposed action: Amendment of section 1021.1 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: Crossing charge schedule for use of bridges and tunnels.

Purpose: To raise additional revenue.

Text of proposed rule: See Appendix.

Text of proposed rule and any required statements and analyses may be obtained from: Frank Pascual, Director of Public Affairs, Triborough Bridge and Tunnel Authority, Two Broadway, 22nd Fl., New York, NY 10004, (646) 252-7416, e-mail: fpascual@mtabt.org

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

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.