

# RULE REVIEW

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## Public Service Commission

NOTICE is hereby given that the Public Service Commission has reviewed the rules adopted in 1997, 2002 and 2007 as required by the State Administrative Procedure Act § 207, and determined that the following rules will continue without change:

1. 16 NYCRR § 753 (Case No. 95-M-1007).

a. Description of rules:

This enactment added Subchapter F of Chapter VII of 16 NYCRR, entitled “Protection of Underground Facilities,” implemented revisions to Public Service Law (PSL) § 119-b and General Business Law (GBL) Article 36, and replaced the Department of Labor’s “Code Rule 53” (12 NYCRR § 53). The rules establish precepts for the protection of underground facilities (UGF) to assure public safety and to prevent damage to public and private property by expanding excavator and operator knowledge of the One Call notification system (One Call). The rules require an excavator to contact One Call before work commences and to provide One Call with the work zone location. One Call coordinates excavation by notifying the owner of any UGF at the work location (the Operator) and informs the Operator to clearly mark the UGF within the regulatory prescribed time frame and before excavation or demolition begins.

b. Statutory authority: PSL § 119-b and General Business Law Article 36.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The legal basis for a new Part 753 are PSL § 119-b and GBL Article 36. The new regulations were enacted to protect underground pipelines, conduits, ducts, cables, wires, manholes, and vaults installed by Operators of UGFs to furnish electricity, gases, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water from damage by excavation or demolition. This regulation protects consumers’ steady supply of public utility services and protects UGFs from damage.

2. 16 NYCRR § 262 (Case No. 97-G-0230).

a. Description of rules:

Amendments were made to 16 NYCRR Part 262 in order to bring the New York State pipeline safety regulations into conformance with the federal Department of Transportation (DOT) statutes, the most significant pertaining to alcohol testing and the addition of an Alcohol Misuse Program.

b. Statutory authority: PSL §§ 65(1), 66(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

The intent of the amendments was to bring the State’s pipeline safety regulations into conformance with the counterpart federal Department of Transportation regulations which had been amended

several times. The amendments were designed to prevent accidents and injuries that result from the misuse of alcohol by employees of operators of certain pipeline facilities. The regulation requires operators to develop an alcohol misuse plan that outlines methods and procedures for federal compliance, and to promulgate educational materials to disseminate the operators’ policy on misuse of alcohol.

3. 16 NYCRR §§ 90.3, 91.1, 225.3, 402.3, 510.3, 600.3, 633.9(g) (Case 97-M-0623).

a. Description of rules:

The Commission adopted interest rates applicable to customer deposits held by utilities, replacing the actual Customer Deposit Rate stated in the regulations with a formula.

b. Statutory authority: PSL §§ 36(3), 117.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

Prior to enactment of this regulatory amendment the actual Customer Deposit Rate was specifically stated in the regulations and adjustment of the rate to account for current monetary trends was onerous. To assure a consistent interpretation, staff recommended that an advisory letter be issued each time the rate is revised, to publicize the new rate.

4. 16 NYCRR Parts 600, 631, 633 (Case No. 96-C-1114).

a. Description of rules:

Part 600 and 631 amendments pertaining to non-residential customers streamlined the existing rules governing provision of service to non-residential customers by eliminating unnecessary details and furnishing companies that provide service greater flexibility. The new rules eliminate detailed record keeping requirements for companies with respect to the kind of records to be kept regarding customer deposits, deposit refund requirements, type of receipts and information about deposits that must be given to customers.

b. Statutory authority: PSL §§ 4(1), 92(1), 94(2), 96(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

Part 633 was removed from Subchapter C, Rates and Charges, and placed in Subchapter A, Service, and then renumbered to create a new Part 609 that better reflects current policy and applies only to basic, local, residential telephone service, including radio telephone utilities. The definitions list was consolidated, and minor changes to Deferred Payment Agreements and Proof of Identity as a condition for services were enacted.

5. 16 NYCRR § 3.9(e) (Case No. 01-M-0886)

a. Description of the rules:

A new provision for mediator confidentiality was implemented by the Commission to supplement the existing protection provided by PSL § 15 and 16 NYCRR § 3.9(d). Alternative Dispute Resolution (ADR) processes are increasing in use by the Commission in the development of public policy, and determining and monitoring operat-

ing practices among competitors and incumbent providers of regulated services. Department Staff facilitate and mediate numerous cases in which parties offer confidential communications. Mediated proceedings are any process in which an ADR technique is used to resolve an issue in controversy. Any oral or written communication prepared for the purpose of a mediated proceeding is not required to be disclosed, and with the enactment of Section 3.9(e) a more stringent policy of confidentiality has been implemented.

- b. Statutory authority: PSL §§ 4(1), 15, 20(1).
- c. No hearings or public meetings are scheduled.
- d. The rules are in effect and will continue.
- e. Need and legal basis of rules:

In order to supplement 16 NYCRR § 3.9(d) (confidentiality of settlement negotiations) and PSL § 15 (which obligates department employees to protect confidential information obtained in the administration of Department business) Rule 3.9(e) was drafted to extend the protections in Section 3.9(d) to other ADR processes used by the Department.