

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on July 16, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 11-T-0534 - Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the "Rochester Area Reliability Project," Approximately 23.6 miles of 115 Kilovolt Transmission Lines and 1.9 Miles of 345 Kilovolt Line in the City of Rochester and the Towns of Chili, Gates and Henrietta in Monroe County.

ORDER GRANTING AMENDMENTS TO ARTICLE VII CERTIFICATE
AND APPROVING ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN
FOR SEGMENT II

(Issued and Effective July 21, 2015)

BY THE COMMISSION:

INTRODUCTION

By this Order, we are granting three amendments to a previously-granted Certificate of Environmental Compatibility and Public Need (Certificate) that authorized Rochester Gas & Electric Corporation (RG&E or the Company) to construct and operate an electric transmission facility called the Rochester Area Reliability Project (RARP or the Project). We are also approving the Environmental Management and Construction Plan (EM&CP) for Segment II of the RARP. In so doing, we are imposing appropriate conditions to ensure that construction and environmental management of the RARP are carried out consistent with good engineering and environmental practices.

BACKGROUND

On September 29, 2011, RG&E filed with the Commission an application, pursuant to Article VII of the Public Service Law (PSL), seeking a Certificate authorizing the RARP. The RARP is an electric transmission project designed to enhance the reliability of RG&E's electrical network in the Rochester area. The RARP, as proposed and subsequently authorized, consists of 345 and 115 kV transmission lines, improvements to three existing substations (including Station 80), and construction of one new 345 kV/115 kV substation (Station 255) in Monroe County.¹

In light of arguments made in petitions for rehearing, the Commission remanded the case to the parties;² thereafter, it reopened the record to permit the re-examination of alternative locations for Station 255 between Station 80 on the east and the Rochester & Southern Railroad (RSR) on the west and any necessary changes to the routes of Circuits 40, 940 and 941.³

On April 24, 2014, RG&E filed its proposed EM&CP for Segment II, which includes the relocation of a portion of Circuit 906 in the Town of Chili along the RSR corridor and construction of portions of Circuits 940 and 941 in the Towns of

¹ Case 11-T-0534 Rochester Gas and Electric Corporation, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued April 23, 2013) (the Certificate Order).

² Case 11-T-0534, supra, Order on Petitions for Rehearing (issued August 15, 2013). The Commission explained that RG&E should expeditiously continue to prepare its EM&CP in compliance with the Certificate Order. The Commission approved the EM&CP for Segment I in part in an Order issued on December 20, 2013.

³ Case 11-T-0534, supra, Order Reopening the Record for the Re-Examination of Location of Substation 255 and the Route of Circuits 40, 940 and 941 (issued November 15, 2013)(the Reopener Order).

Chili and Gates; construction of Circuit 941 will also occur in the City of Rochester. Segment II commences with structures 906-14, 940-39, and 941-39 on Sheet 31026, 1 of 21.

A 45-day comment period for review of the Segment II EM&CP ended on June 10, 2014. Comments on the EM&CP for Segment II were filed by the attorney for Susan Krenzer (Executrix of the estate of Michael Krenzer) and David Krenzer (the Krenzers), the New York State Department of Agriculture and Markets (Ag&Mkts), and landowner Bryan T. Moore. Department of Public Service Staff (Staff) also provided informal comments to RG&E. In response to the comments, RG&E filed revisions to Segment II of its EM&CP on September 26, 2014.

On May 8, 2014 and May 7, 2015, pursuant to PSL §121(3), RG&E filed applications for amendments of its Certificate requesting three modifications of the authorized transmission facility. Of the amendments sought in 2014, one is the extension of underground installation of approximately 2,000 feet of Circuit 941 in the vicinity of the Greater Rochester International Airport requested by National Grid. The second is a change from underground to overhead for a portion of Circuit 940 crossing Interstate I-490, NY Route 204 and the CSX Railroad requested by the New York State Department of Transportation (DOT). The third amendment, sought this year, is an expansion of Station 80 to accommodate a fifth bay.

RG&E asserted that PSL §123(2) does not require a hearing on the amendments because the proposed changes would not result in any material increase in any environmental impact of the facility or a substantial change in the location of a portion of such facility. No comments were received regarding the proposed certificate amendments by the June 10, 2014 and May 28, 2015 deadlines established by the Secretary on April 30, 2014 and April 23, 2015, respectively.

THE AMENDMENT APPLICATIONS

Originally, RG&E planned for Circuit 941 to be placed overhead from RG&E's Station 67 and across three National Grid 115 kV Circuits (111, 113 and 114) and one RG&E 115 kV Circuit (903) to a point about 600 feet north of Beahan Road (County Road 164). From there it was to be underground. During the detailed design and engineering for Circuit 941, RG&E was informed by National Grid that an overhead crossing of three National Grid circuits was not acceptable for reliability reasons. If RG&E's Circuit 941 were to fall on National Grid's three circuits and RG&E's single circuit, it would cause an outage, which is unacceptable for system reliability purposes.

A proposal to place the RG&E circuit overhead but beneath the National Grid and RG&E circuits was unacceptable due to the lack of electrical clearance between the conductors. To gain the necessary overhead clearance for Circuit 941 to pass underneath the four circuits, the conductor height would need to be increased by between 35 and 40 feet. Changing the conductor height for each circuit would require four new sets of structures - one on each side at the 35-40 foot height and the previous structure behind the new higher structure to compensate for the change in the conductor loading on the structures. For the circuits, this approach would require a total of 12 structures in order for one circuit to perpendicularly cross underneath the circuits. Visually, these 12 structures would be higher than the existing structures in proximity, causing a contrast that would draw more attention to the area than if Circuit 941 were placed underground.

The Certificate Order authorized the construction of Circuit 940 across I-490, NY Route 204 and the CSX Railroad right-of-way (ROW) as an underground facility. During the detailed design phase of the RARP, further engineering analysis

indicated that the I-490 concrete bridge piers over NY Route 204 were constructed on bedrock and in the direct path of the authorized underground placement of the circuit. The concrete bridge piers are configured on a skew (diagonally intersecting the path) to the alignment of the authorized horizontal directional drill (HDD) for Circuit 940. DOT raised concerns about the HDD encroaching on and/or weakening the concrete piers that support the I-490 bridge structures. The overburden depth averages 15 feet, which is near the lower threshold for the casing pipe of this length and diameter.

Several alternative alignments were examined to avoid the bridge piers. Boring through rock would be highly likely in the case of any alternative alignment. Rock bores are more risky and more difficult than soil bores, require more time and can be more expensive. URS, RG&E's consultant, refined an underground alignment that avoided the bridge piers; however, representatives of DOT, the agency with the authority to grant the necessary property rights to cross the interstate and state routes, still indicated a preference for an overhead crossing of I-490 and NY Route 204.

In its amendment application, RG&E proposes a four-pole overhead layout to be located northeast of the I-490 bridge over NY Route 204. At each end, there would be a transition overhead to underground duct bank with a manhole.

In its 2015 amendment application, RG&E proposes expanding its existing Station 80 on the south side to add a fifth bay, circuit breakers, switches and associated equipment. The expansion would occur on RG&E's property and would require filling in 0.37 acres of federal wetlands. The Company will submit to Staff a revised wetland mitigation plan, a storm water pollution prevention plan and final "for construction" drawings.

RG&E explains that it designed the RARP to deal with a temporary loss of the capacity of the Ginna Nuclear Power Plant (Ginna) and the loss of any other important system element; however, reliability rules now require consideration of a stuck breaker contingency. According to the Company, the work proposed in its Certificate amendment application, which is part of the package of improvements described in its letter to the Administrative Law Judges in this proceeding (dated December 23, 2014) that reported on the Ginna Retirement Transmission Alternative (GRTA), will address the stuck breaker contingency. RG&E states that the estimated time required to design and construct the components described in its amendment application is approximately 24 months. According to the Company, performing this work will enhance reliability in its service area and improve the operation of existing assets. In its December 23, 2014 letter, RG&E identified a GRTA that would strengthen its electric transmission system and allow it to maintain reliability following the proposed retirement of Ginna.

In connection with the Station 80 construction, RG&E requests that the Commission refuse to apply two sections of the Town of Henrietta's zoning ordinances - the section that establishes permitted uses within R-1 zoning districts and does not reference public utility uses (§295-7) and the section that states "no structure in a residential district shall exceed two stories of any kind above the basement" and establishes a maximum height limitation of 35 feet within residential zoning districts (§295-8).

THE SEGMENT II EM&CP, COMMENTS AND RESPONSES

The Segment II EM&CP specifies measures and techniques regarding the environmental management and construction of the transmission lines that comprise the RARP, other than those subject to the Reopener Order. On June 2, 2014, John B.

Fitzsimmons, counsel for the Krenzlers, co-owners of real property on Brook Road in the Town of Chili, filed comments on the Segment II EM&CP. According to the comments, RG&E seeks an easement for a wide swath of land along the Krenzlers' westerly property boundary for ROW, vegetation clearance, and an off-ROW access that would diagonally traverse the middle of the property, as well as temporary easements for structure fabrication, wire pulling and spoil storage, which encroach significantly into actively-used agricultural fields. The Krenzlers claimed that RG&E had not stated why it needs an access road so far from the easement area. The Krenzlers proposed that RG&E abandon the off-ROW access road and extend the on-ROW access road, continuing it northeasterly past Structure 906-25 and connecting to Brook Road. Alleging that the RG&E proposal would impact farming operations along their westerly property boundary, require timber removal on their property, and cause possible adverse long-term soil compaction impacts from transmission line construction on their cultivated fields, the Krenzlers sought adequate financial compensation for granting the easements and reimbursement for legal fees.

While the proposed off-ROW access road extends diagonally through most of the property, RG&E explained that it is not through open actively farmed land. It is a farm lane between the edge of the field and deciduous woods. After an on-site meeting with an Ag&Mkts representative, RG&E revised the access to a Type 3 access road. Timber mats will be placed to minimize impacts to the farm field. It is to be a temporary (45-60 days) access. Restoration of the access road surface will be to conditions that existed prior to its use by RG&E.

According to RG&E, it will compensate the owners for any easements that it acquires based upon the highest and best appraisal by RG&E's licensed appraiser including reimbursement

for crops and timber based upon a survey and inventory to determine fair market values. The EM&CP contains measures for agricultural specialist monitoring of the transmission line construction in agricultural fields, mitigation measures including requirements for cultivated field decompaction, restoration to preconstruction conditions, and long-term monitoring. RG&E asserted that no policy, statute or regulation provides for the awarding of attorney's fees.

On October 17, 2014, the Krenzlers' attorney filed supplemental comments objecting to RG&E's revised EM&CP proposal for the off-ROW access from Brook Road south to the rail bed. The Krenzlers stated that the existing lane south from Brook Road only extends to the building adjacent to the lane. The remaining land is actively farmed land right to the wood/brush edge. RG&E proposed to continue the off-ROW access on mats on the field edge. The Krenzlers proposed that the access be shifted out of the actively farmed field into the adjacent woods/brush to the west and northwest. There are swales and culverts that drain the actively farmed fields that would be crossed by the off-ROW access regardless of location in or adjacent to the actively farmed fields. These would need to be maintained by RG&E. A laydown/storage area proposed by RG&E to be located on the south side of the existing building is in an actively farmed field, which is unacceptable to the Krenzlers. RG&E subsequently indicated its belief that the laydown/storage area could be shifted from the active agricultural land on the south side of the building at Brook Road to the existing ROW at Structure 906-20. This area would be approximately 150 feet long and 50 feet wide, centered on the structure.

On September 3, 2014, Ag&Mkts provided comments on the EM&CP, pointing out that the Joint Proposal (adopted by the Commission in the Certificate Order) called for all agricultural

land and facilities, vulnerable agriculture soils and other farm-related features to be identified in the EM&CP and on the plan and profile drawings. Ag&Mkts identified agricultural fields west of Coates Road and south of Brook Road with poorly drained seasonal soils for which the Joint Proposal called for the use of timber mats (Type 3 Access) for temporary access into and along all active agricultural lands. RG&E revised all of the access along active agricultural fields to Type 3 access with mats.

Ag&Mkts observed that the EM&CP states that "no subsurface drain tile fields were located during site visits for the Segment II EM&CP preparation." Ag&Mkts further asked whether the property owner and/or the farm operator were contacted to identify subsurface drain tiles. RG&E indicated that no one was contacted regarding this matter.

Coates Road is a Town of Henrietta road. According to Ag&Mkts, it is not regularly maintained and needs improvement. From the intersection of Coates Road with the Genesee Valley Greenway Trail, RG&E proposed to follow an unimproved tractor path that crosses a culvert(s) of unknown composition and structural integrity. RG&E revised its drawings indicating a Type 3 access from Coates Road. An off-ROW access extending southwest from Brook Road traverses a poorly drained active agricultural field. The construction drawings were revised to include Type 3 access using mats. In addition, the EM&CP text and drawings detail the repair plan for subsurface drains.

On October 31, 2014, RG&E met with the Krenzlers to discuss the location of agricultural field drain tile and pipe, the agricultural drainage (including any existing culverts needing improvement that cross the access from Brook Road), the actual access location from Brook Road south and the relocation of a laydown/storage area into the wooded wetland. The

wooded/brush areas contain federally- and state-regulated wetlands. As proposed by RG&E, the off-ROW access extension would be on the field edge in the 100-foot wetland adjacent area, while the Krenzlers propose relocation of the access out of the agricultural fields.

On May 2, 2014, landowner Bryan T. Moore submitted comments objecting to what he characterized as RG&E's plans to "CLEAR CUT the 1st 40 feet in from the back lot line AND anything else that was beyond the 40ft mark that might somehow appear to be a problem for them at any time, ever." (Emphasis in original). Circuit 941 crosses Mr. Moore's property between structures 93 and 94; it abuts the RSR rail bed. Mr. Moore complained of a lack of notice concerning RG&E's proposal and also asserted that RG&E was trespassing on his land.

According to RG&E, negotiations with Mr. Moore on a vegetation management easement appear to be close to a positive resolution. Records show that, contrary to Mr. Moore's assertion, he received notices regarding the RARP during the application review phase, besides a notice of the availability of the Segment II EM&CP. Moreover, what Mr. Moore considers a trespass by RG&E is authorized by §404 of the Eminent Domain Procedure Law in order to allow preparatory work in connection with the authorized facility to be performed.

Staff's Segment II EM&CP review covered inquiries about: the location of access roads along the RSR rail bed; the intended plans for using timber mats for access on actively farmed land; work areas centered on the pole locations; the construction methods for structures to be set in standing water; cleaning station locations; methods for access to cross the rails; and temporary storage areas in wetlands. The revisions to RG&E's EM&CP responded to Staff's comments. The EM&CP

reflected the modifications requested in RG&E's application for Certificate amendments filed on May 8, 2014.

DISCUSSION AND CONCLUSION

Additional Undergrounding of Circuit 941

The existing land uses traversed by the overhead Circuit 941 would be the Buckeye pipeline, three underground fiber optic cables and the four overhead 115 kV circuits. To the north are brush and scrub forestland, a crossing of Little Black Creek, Beahan Road (County Route 164), and brush and scrub forestland up to and including the manhole for underground placement of Circuit 941. If installed underground, the Circuit 941 route would be in the same location with an open trench for the first 500 feet and then, for the remaining 1,500 feet, there would be a directional bore under the Buckeye pipeline, the four overhead 115 kV circuits and the three fiber optic cables. Due to the proximity of a portion of the circuit to the Rochester Airport runways, additional time may be required if there is a Federal Aviation Administration review.

Ecologically, the overhead crossing would require crossing of a forested wetland, removal of the forested cover between the north side of the ROW for the four overhead circuits and the overhead-underground transition point, including the forest cover over Little Black Creek. Undergrounding of the circuit will require about 500 feet of open trenching to place Circuit 941 under the Buckeye pipeline and the fiber optic cables. The remaining 1,500 feet would be placed via the HDD method. There would be no disturbance of the brush, forest cover, Little Black Creek, the RSR rail bed or the Beahan Road pavement and shoulder.

In terms of cultural resource sensitivity, regardless of whether the circuit is placed overhead or underground, the

area is highly sensitive and will be the subject of additional on-site shovel tests for any areas that are to be disturbed.

From a visual perspective, the additional 2,000 feet of undergrounding of Circuit 941 eliminates an overhead visual intrusion of 12 higher structures for the four circuits in a transition location of the 115 kV circuits under the Rochester Airport from underground to overhead.

The estimated cost of overhead placement of the 2,000 feet of the circuit is \$4.0 million. The proposed underground placement of the same segment is estimated to cost \$5.25 million.

Consideration of the requested Certificate amendment regarding the additional underground installation requires us to balance the environmental impacts (regarding land use and ecological, visual and cultural resources) and costs. We also take seriously the request of National Grid based on electric system reliability concerns. Given the various pertinent considerations, we will grant the amendment of the Certificate to authorize the additional underground installation.

Circuit 940 Crossing of I-490, NY Route 204 and the CSX Railroad Rights-of-Way

The existing land uses in the vicinity of the proposed modification are primarily transportation land uses. I-490 is elevated on bridge piers at the intersection with NY Route 204. There are exit and entrance ramps connecting NY Route 204 with I-490. The CSX rail bed is to the west of the road intersection. Circuit 940 would cross a state-regulated forested wetland adjacent to the west side of I-490. On the east side of I-490 and to the north of NY Route 204 are federally-regulated wetlands, a pond and a residential

subdivision. South of the exit ramp of I-490 to NY Route 204 is a wooded buffer adjacent to a residential subdivision.

Ecologically, the overhead placement of the transmission facility will require selective tree removal within state-regulated wetland GT-4 and the 100-foot state wetland buffer. It will result in the conversion of 1.04 acres of forested wetland to scrub-shrub/emergent wetland. This same segment, if underground, would be bored with no surface disturbance and no conversion of forested to scrub-shrub/emergent wetland. This segment of transmission line is not considered to be in an area of cultural resource mapped sensitivity, regardless of whether it is placed overhead or underground.

Visually, Circuit 940 is located within an existing ROW containing three overhead circuits. The four new Circuit 940 steel pole structures, ranging from 105 to 125 feet tall, will be proximate but not parallel to the existing circuits. Because of the height and conductor loading, two of the proposed structures will be dead-end type steel poles set on concrete foundations.

In an overhead configuration, Circuit 940 would transition from underground to overhead just east of the intersection of I-490 and span the NY Route 204 exit/entrance ramps to and from I-490, then transition back to underground just west of the CSX rail bed crossing. A combination of topography, brush and mature deciduous vegetation would provide an element of concealment to the overhead transmission structures at the intersection of the two controlled access highways. Speed limits of 55 miles per hour with entrance and exit ramps at the intersection require drivers to concentrate on merging from one high-speed highway onto another. The

visibility of the four proposed structures to the traveling public would be of short duration.

The underground placement with an HDD component would cost approximately \$7.2 million. Locating Circuit 940 overhead on four poles with a duct bank and manhole transition would cost approximately \$1.9 million.

Consideration of the requested Certificate amendment regarding the proposed overhead placement of a portion of Circuit 940 over the intersection of I-490 and NY Route 204 and the CSX rail bed requires us to balance the identified environmental impacts (particularly the adverse impact associated with a change from forested to scrub-shrub wetland) and costs. In addition, we are certainly mindful of the concerns expressed by DOT as to the bridge structure. Having carefully weighed the various pertinent considerations, we will grant the amendment of the Certificate to authorize the change from underground to overhead construction of the identified portion of Circuit 940.

Station 80 Expansion

RG&E's second Certificate amendment application is for a fifth bay to be installed at Station 80 to allow additional breakers to be added and the 345 kV side of transformer 5 to be relocated from bus section 2 to the new fifth bay. In addition, RG&E proposes to reconnect transformer 3 to the fifth bay and to install necessary breakers and related equipment. With this construction of the fifth bay, RG&E will be able to mitigate the stuck breaker contingency that now exists. The bus design is a breaker and a half scheme that meets the reliability rules requiring the analysis to take account of a stuck breaker contingency. The addition of the fifth bay at Station 80 and the non-Article VII station work to add large transformers at

the Pannell Road Station will improve system reliability in RG&E's service territory and is integral to RG&E's GRTA project, which will obviate the need for Ginna. While RG&E will need to obtain other state and local approvals for the non-Article VII work, our grant of the requested Certificate amendment is our final authorization of the work necessary for RG&E to implement the GRTA.

The fifth bay will impact about two acres on an existing RG&E parcel. RG&E will bring in fill and move the existing southern fence to the south toward an existing natural gas pipeline ROW. As noted above, RG&E proposes filling in 0.37 acres of emergent and scrub-shrub federal wetlands. RG&E will be required to propose mitigation for this impact and to provide Staff with a revised wetland mitigation plan, a storm water pollution prevention plan, and final "for construction" drawings. No other environmental impacts were found in RG&E's archeological investigation, rare, threatened and endangered species assessment, electrostatic and electromagnetic field evaluation, or invasive species, visual impact, or noise assessments.

As previously mentioned, RG&E requests that we refuse to apply the Town of Henrietta's zoning ordinances, excluding public utility uses from an R-1-15 District and limiting structure height to 35 feet in such District. Consistent with the decision we made in the Certificate order, we will refuse to apply the two local laws cited by RG&E in view of existing technological limitations and the needs of consumers.

EM&CP for Segment II

Most of the formal and informal comments on the proposed EM&CP were resolved when RG&E submitted its revisions on September 26, 2014. Subsequent fieldwork by Staff confirmed

the appropriateness of such revisions. The remaining areas of controversy are the access location from Brook Road south and the location of a laydown/storage area. As proposed by RG&E, the off-ROW access extension would be on the field edge in the 100-foot wetland adjacent area. The relocation of the access out of the field, as the Krenzlers proposed, would require timber removal causing the modification of a wooded wetland to scrub-shrub wetland which, in turn, would require compensatory mitigation. While the mats preclude the use of the agricultural land during the construction of the transmission facility, the land can be returned to agricultural production upon completion of the work. Regrowth of the wooded wetland would take many years. Given the long-term impacts on the wooded wetlands, we will require mats to be used and access to be on the edge of the agriculturally-used land. This land will be restored to its former uses upon completion of construction. We will also require RG&E to report to Staff on the drain tile locations, tractor path and culvert evaluation, and laydown/storage area relocation, as RG&E has agreed. Moreover, we will direct the Company to report to Staff on the results of its negotiations with Mr. Moore for a vegetation management easement.

The Commission orders:

1. The application for amendment to the Certificate of Environmental Compatibility and Public Need, filed by Rochester Gas & Electric Corporation (RG&E) on May 8, 2014, for a 2,000-foot extension of underground placement of Circuit 941 in the vicinity of the Greater Rochester International Airport and the change from underground to overhead for a portion of Circuit 940 crossing I-490, NY Route 204 and the CSX Railroad is granted.

2. The application for an amendment to the Certificate of Environmental Compatibility and Public Need,

filed by RG&E on May 7, 2015, for expansion of Station 80 is granted, subject to the following conditions: (a) RG&E shall propose mitigation for filling 0.37 acres of federal wetlands and submit a revised wetland mitigation plan to Staff; (b) RG&E shall submit to Staff a storm water pollution prevention plan; and (c) RG&E shall submit to Staff final "for construction" drawings.

3. Segment II of the Environmental Management and Construction Plan filed by RG&E on April 24, 2014 (and revised on September 26, 2014) is approved, subject to the following conditions: (a) before the start of construction in the affected area, RG&E shall contact the landowners/farm operators to obtain accurate drain tile location information, undertake the tractor path and culvert evaluations, and report the information and evaluations to Staff as described in the body of this Order; (b) before the start of construction in the affected area, RG&E shall provide to Staff an evaluation of the shift of the laydown/storage area, as described herein; and (c) before the start of construction in the affected area, RG&E shall report to Staff the results of its negotiation with Bryan T. Moore for a vegetation management easement.

4. RG&E shall not commence the construction authorized in this Order until it has received "Notice to Proceed with Construction" sent by the Chief of the Environmental Certification and Compliance section in the Office of Utility Rates and Services.

5. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary