

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

APPLICATION OF ROCHESTER GAS AND ELECTRIC CORPORATION
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION OF "ROCHESTER AREA
RELIABILITY PROJECT," APPROXIMATELY 23.6 MILES OF 115
KILOVOLT TRANSMISSION LINES AND 1.9 MILES OF 345 KILOVOLT
TRANSMISSION LINES IN THE CITY OF ROCHESTER AND THE
TOWNS OF CHILI, GATES, AND HENRIETTA IN MONROE COUNTY

CASE 11-T-0534

**Statement of Rochester Gas and Electric Corporation
On Why Additional Studies of Site 20
Should Not Be Required**

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I. Preliminary Statement

Rochester Gas and Electric Corporation ("RG&E") submits this statement in response to the February 4, 2015 ruling of Administrative Law Judges Michelle L. Phillips and Elizabeth H. Liebschutz inviting the parties to this proceeding to comment on: (i) reasons, if any, why RG&E should not conduct and submit the type of studies for the siting of Station 255 at Site 20 that it would have provided if that site had been proposed by the Company in its original Article VII application in this proceeding; and (ii) if such studies are to be submitted, a reasonable deadline by which they should be filed.

As RG&E will explain below, the record in this proceeding shows that RG&E has already conducted studies sufficient to establish that Site 20 is inferior to Site 7 and would not have been selected by RG&E as the location of Station 255, whether it is reasonably possible to locate Station 255 at Site 20 or not. This is true even though system reinforcement work outlined in the Company's December 23, 2014 filing obviates the need to construct Station 255 as quickly as had been anticipated at the time of evidentiary hearings in this proceeding.

Although RG&E believes no further studies are necessary, Appendix A to this Statement includes a description of the types of studies RG&E would propose to perform on the feasibility of locating Station 255 at Site 20 and a date by which those studies could be completed, should the Administrative Law Judges determine that additional studies must be performed.

II. Procedural History

1. The Certificate Order

On September 30, 2011, RG&E filed an application under Article VII of the Public Service Law (“PSL”) for a certificate of environmental compatibility and public need for the Rochester Area Reliability Project (“RARP”). After public outreach, public statement hearings, discovery and seven months of negotiations among the parties, on December 12, 2012, RG&E filed with the Public Service Commission (“Commission”) a Joint Proposal executed by RG&E, the Department of Public Service Staff (“DPS Staff”), the Department of Environmental Conservation (“DEC”) and the Department of Agriculture and Markets (“Ag & Markets”). A hearing on the Joint Proposal was held before Administrative Law Judge Stein on January 23, 2013, and by *Order Adopting the Terms of a Joint Proposal and Granting a Certificate of Environmental Compatibility and Public Need with Conditions*, (the “Certificate Order”)(DMM 76)¹ issued April 23, 2013, the Commission granted a certificate of environmental compatibility and public need for the RARP (“Certificate”).

¹ References to “DMM” followed by a number are to the filing number of a document on the Commission’s Document and Matter Management system.

2. Krenzer Petition for Rehearing

On May 22, 2013, members of the Krenzer family, including Thomas Krenzer, the owner of the proposed location for Station 255 of the RARP, petitioned for rehearing of the Certificate Order. In its August 15, 2013 *Order on Petitions for Rehearing* (DMM 98), the Commission granted the Krenzers party status, but said, “In the interim, the Certificate Order is neither modified nor stayed by this order. RG&E should expeditiously continue to prepare its EM&CP filing in compliance with the Certificate Order, in light of the reliability need for this project” (id., p. 15). As directed by the Commission, RG&E continued to design the project and has prepared and submitted the EM&CP for most of the Project, including EM&CP Segment I, which includes the construction details and design for Station 255 on Site 7.

3. The Reopening Order and Actions in Compliance with that Order

In its *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 (“Reopening Order”) (DMM 107), the Commission, while not granting rehearing, said that additional fact finding might be helpful in deciding the Krenzer Petition for Rehearing, and directed RG&E to re-examine alternate sites for Station 255 (Reopening Order, p. 12).

The Reopening Order also directed RG&E to pursue a right-of-way for Circuits 940 and 941 through a United States Department of Agriculture Natural Resource Conservation Service (“NRCS”) conservation easement (“Conservation Easement”) between the Krenzer property and the Rochester & Southern Railroad (Reopening Order, p. 11).

On January 16, 2014, RG&E filed with the NRCS an application for permission to have 940 and 941 cross the Conservation Easement adjacent to the cross-state 345 kV lines of the New York Power Authority (“NYPA”). The initial application was denied, but by letter of September 26, 2014, NRCS notified RG&E that its revised application had been granted. By moving the route of Circuits 940 and 941 from the land of Marie and David Krenzer to the Conservation Easement, one of the Krenzers’ principal objections to the Certificate Order, the “zig zag” of the certified route for 940 and 941, will be eliminated.

On January 16, 2014, RG&E filed with the Commission a two volume study, prepared by URS Corporation, entitled *Report on Alternatives Analysis for Substation 255 and Associated Transmission Lines* (“Report”) (DMM 130). The Report, based on a detailed desktop analysis prepared in a manner consistent with planning and engineering procedures used for the original application and supplemented by visits to Site 7, reported on 25 sites that theoretically could be considered for the location of Station 255. It analyzed over 85 items in 7 major categories including real estate, land use, permitting, environmental (*e.g.*, agricultural and soils considerations), engineering, impact to project budget, and impact to project schedule. See Appendix B for a list of Report criteria specific to the siting of the substation. Through a culling process conducted by Administrative Law Judge Eleanor Stein, the number of sites to be considered for the location of Station 255 was reduced to three – Sites 7, 9 and 20.

Evidentiary hearings were held on June 17, 18 and 19 before Administrative Law Judges Elizabeth Liebschutz and Michelle Phillips. Based on a stipulation presented by the Krenzels on the first day of hearings, Judges Liebschutz and Phillips, by *Ruling Regarding Alternative Site 9*

and Proposed Northern Routing from Alternative Site 20, issued June 25, 2014 (DMM 248), eliminated Alternative Site 9 and the Northern route from further consideration.

4. The R. E. Ginna Plant Proceeding

The R.E. Ginna Nuclear Power Plant (“Ginna”) is one of three principal sources of power for the Rochester area. The RARP was designed to deal with the temporary loss of the Ginna’s capacity through a planned or forced outage, and with load growth. On July 11, 2014, Constellation Energy Nuclear Group, LLC, parent of R.E. Ginna Nuclear Power Plant, LLC (“GNPP”), the limited liability company that owns Ginna, filed with the Commission a *Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R. E. Ginna Nuclear Power Plant* (Case 14-E-0270; DMM 1). The Petition stated that GNPP's power purchase agreement with RG&E had expired, that it expected revenues from wholesale market sales of capacity and energy to be insufficient to cover the costs of continued operation, and in the absence of a Reliability Support Services Agreement (“RSSA”), management of its parent company would recommend that the board authorize Ginna’s retirement as soon as practicable.

The Commission’s November 14, 2014 *Order Directing Negotiation of a Reliability Support Services Agreement and Making Related Findings* in Case 14-E-0270, required RG&E to negotiate an RSSA with GNPP and report back to the Commission by January 15, 2015. It also directed RG&E to look for alternatives that might shorten the term of any RSSA with GNPP.

By letter of December 23, 2014 in this proceeding, RG&E advised the Administrative Law Judges and the parties that RG&E has identified a transmission solution set that will allow for

the retirement of Ginna and could minimize the term of an RSSA, provide net financial benefit to RG&E’s customers, and strengthen RG&E’s system - the Ginna Retirement Transmission Alternative (“GRTA”). RG&E estimates that the GRTA can be completed between December 2016 and June 2017, and would allow RG&E to maintain reliability following the proposed retirement of the Ginna Plant. The GRTA mitigates the urgency of completing the construction of the RARP, but does not eliminate the need for RARP.

III. Environmental Impact of Choosing Site 20

The principal question remaining to be decided in the RARP proceeding is whether the Commission, having given all parties ample opportunity to introduce evidence on where Station 255 should be located, and having allowed cross-examination of all evidence submitted, should confirm its decision that Station 255 should be located on Site 7, or should abandon its original findings and select Site 20 as the location of Station 255. Below is a brief restatement of the record evidence on the environmental impacts that would result from selecting Site 20.

(1) Environmental Impacts Shown on the Exhibit 42 Matrix

Exhibit 42, RG&E’s criteria matrix for the alternatives sites for Station 255, provides a useful comparison of some of the impacts of siting Station 255 at Site 7 or Site 20. Based upon a desk-top analysis, it shows:

	<u>Site 7</u>	<u>Site 20</u>
Clearing of forested land required for the substation. A.1.b ²	0	5.4
Acres of land needed for the substation. A.2.c	11	12
Distance of substation to nearest residence (in feet). A.3.d	1584	496
The substation site is owned by a single property owner. B.1.c	Y	N

² References are to line items in Exhibit 42.

(2) Stream Impacts

A DEC-regulated Class C stream crosses the southeast corner of the proposed location for Station 255 at Site 20, and this stream would have to be moved to allow construction of the substation. “[I]t’s a stream associated with a wetland. It’s your source of hydrology for H.R. twenty-six runs from the top of the head waters area right through the center of it” (Tr. 698; l. 7)³. Relocating the stream would require additional impacts to forested wetlands (Tr. 698; l. 15).

Relocating this stream would also require approval of the United States Army Corps of Engineers (“USACE”) (Tr.698; l. 13). PSL Article VII does not preempt federal permitting requirements. The thresholds of the relevant USACE Nationwide Permit, NWP #12 would be exceeded, and an individual wetland permit would be required from the USACE (Tr. 713; l. 10). If the USACE did not grant an individual permit, Station 255 could not be constructed at Site 20 even if Site 20 was certified in this proceeding.

(3) Wetland Impacts

In discussing wetland impacts, DEC witness Steve Miller testified, “the location of Station 255 and the proposed access road at the certified location are not environmentally problematic. The area is already highly disturbed by agricultural activities and conversion from one disturbance to another is negligible” (Tr. 809; l. 14). His testimony continued:

Q. From an environmental perspective does Certified Site 7 and routing Circuits 940 & 941 through the CE have the least environmental impact of all alternative routes, assuming RG&E undertakes such appropriate mitigation as may be required for crossing the CE?

³ References designated “Tr.” are to pages and lines of the transcript of the evidentiary hearings in this case.

A. Yes, it does. (Tr. 809; l. 25).

Prior to evidentiary hearings, a qualified and experienced member of RG&E's Environmental Panel delineated wetlands on Site 20. The results of that delineation are depicted on Exhibit 71. Locating Station 255 at Site 20 would require the permanent destruction of 2 acres of wetland potentially regulated by DEC or USACE (Tr. 650; l. 20) and would require the conversion of more than four acres of forested wetland to scrub-shrub or shallow emergent wetland for the transmission lines exiting to the east and west of Site 20 (Tr. 651; l. 2). DEC's witness Steve Miller testified that DEC relies on the delineations prepared by professional consultants (Tr. 814; l.22) and that the delineation by RG&E witness Trembath looks accurate to him (Tr. 848; l. 5). The USACE Nationwide Permit would not cover this, because the total amount of wetland lost would exceed the threshold (>0.5 acre of impact) of the Nationwide Wetland Permit (Tr. 697; l. 15). Just as an individual permit would be required for relocating the Class C stream, an individual permit would be required for filling the wetlands, and would require additional mitigation. For every acre of wetland lost, RG&E might be required to create three new acres of wetland⁴ (Tr. 697; l. 18).

Relocation of the Class C stream noted in item (2), above, to remove it from the footprint of Site 20, would necessitate a significant, but not yet quantified, increase in the amount of clearing of forested wetlands in the DEC- regulated wetland HR-26. (see Exhibit 71).

⁴ For every acre of forested wetland cleared (but not filled) RG&E is required to provide 1.5 acres of wetland in mitigation (Certificate Order, p. 14).

(4) Visual Impact

Because of Site 20's elevation and because trees would have to be cleared for the right-of-way of the transmission lines entering from the west, Station 255 at Site 20 would be visible from homes along Milewood Road ((Tr. 638; l. 13), and 940 and 941 and the NYPA lines would create two separate visual intrusions for persons on boats on the river (Tr. 695; l. 21).

Site 20 would also present a visual problem for the multi-million dollar, high tech Riverwood Campus office project now being planned immediately to the north of Site 20. If Site 20 were selected, part of the substation would be on property owned by 4545 East River Road, LLC, and part would be on property to the south owned by Jaynes Riverview LLC. Fred Rainaldi, the chief executive of the Riverwood Tech Campus, LLC, the contract vendee of the Site 9 property, testified that he is planning to develop a state-of-the-art professional office campus at the Riverwood Campus, that his development could bring 1000 or more jobs to the area, and that he plans to invest \$19 – 20 million in the development of the project (Tr. 871; l. 13 – 872; l. 10). He clearly sees locating Station 255 at Site 20 as a detriment to the development of his high-tech project.

(5) Agricultural Impacts

Siting Station 255 at Site 20 would permanently take out of production about six acres of farmland that the Krenzlers farmed under a lease from Kodak until Kodak decided to sell the property (Tr.935; l. 18). The land has prime agricultural soil (Tr. 1100; l.7). Although the land has not been farmed for about ten years (Tr.935; l. 18), it could be returned to agriculture (Tr.

1056; l. 6). Like the Conservation Easement transmission line route from Site 7, the Conservation Easement route from Site 20 would take some Krenzer farm land out of production and would impact the farming efficiency of the surrounding land.

If RG&E were required to construct Station 255 at Site 20, it would be obliged to provide mitigation for the destruction or impact to wetlands at Site 20. Scaling URS delineated wetlands off Exhibit 71, about 12.6 acres of wetlands would have to be created, and the creation of an acre of wetland takes about 3 acres of other lands (Tr. 697; l. 19). The best spot for the creation of new wetlands is farm fields in proximity to the wetlands that would be destroyed at Site 20 (Tr. 749; l. 23). A real estate developer has prepared plans to construct a housing development on the southern end of the parcel on which Site 20 is located (But RG&E has been advised by the current owner of the land that siting Station 255 at Site 20 would make the land unattractive to a developer of housing.).

IV. Cost Impact of Selecting Site 20

The Krenzer petitioners last year planted 2500 acres of farmland in Monroe County (Tr. 944; l. 8). They own about 3998 acres of land in Monroe County (Tr. 951; l. 17). The land the Krenzlers refer to as the “home farm” is but a small part of the Krenzlers farming business, and no Krenzer lives there. Use of Site 7 with the Conservation Easement transmission line route would take 16 -19 acres of farm land out of production (Tr. 582; l. 5) and would reduce the farming efficiency of the surrounding Crop Field Management Unit by 20 – 25 percent (Tr. 573; l. 11). David Krenzer purchased of 72 acres of farm land immediately adjacent to the Krenzer

home farm for \$3125 per acre (Tr.952; l. 14) (Exhibit 79). This is the only evidence in the record of the cost of farm land in the vicinity of Site 7.

The additional cost of the Conservation Easement route over the Certified route will be approximately \$5.885 million (Exhibit 42, line F.5; Tr. 522; l. 2). This cost will be incurred to reduce the impact to Krenzer farm land.

Geotechnical work for Site 7 has been done (Tr.488; l. 21). The engineering design for Station 255 at Site 7 is substantially complete. An EM&CP for Site 7 has been filed and conditionally approved (DMM 121). RG&E estimates that switching the location of Station 255 from Site 7 to Site 20 would add \$7 to \$9 million to the cost of the RARP (See Tr. 522; l. 2), plus the cost of the extensive wetland mitigation and stream relocation that would have to be incurred if Site 20 is chosen. This additional cost is significantly out of proportion to the impact of locating Station 255 at Site 7.

V. Conclusion

Site 20 has been studied more than sufficiently to show that it is inferior to Site 7. Use of Site 20 for Station 255 will have greater environmental impacts than use of Site 7 and will be significantly more costly. Further studies will do no more than reconfirm this, at additional cost to the Project.

If the Administrative Law Judges nevertheless determine that additional studies of the possibility of using Site 20 for Station 255 should be performed, RG&E believes that the studies

described in Appendix A to this Statement go beyond what RG&E would have provided in its Article VII application if Site 20 were its preferred site for Station 255.

If an order directing that additional studies be performed is issued reasonably soon after the March 4, 2015 deadline for comments, RG&E will complete and file these studies by September 30, 2015. To avoid having the possible selection of Site 20 delay the in-service date of the RARP beyond the date it will be needed to provide continued reliability to the Rochester area as electric load grows, RG&E will need to begin the procurement process for engineering for possible use of Site 20 almost immediately. RG&E requests that if a ruling is issued requiring further studies of Site 20, the ruling direct RG&E to commence immediately the procurement process for the engineering services required to design Station 255 for construction at Site 20 should that site be selected, and that a Commission decision on the final location of Station 255 be issued no later than April 2016.

Respectfully submitted,

A handwritten signature in cursive script, reading "John D. Draghi".

John D. Draghi
Attorney for Rochester Gas and Electric Corporation