

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

**CHANGE NOTICE**

May 28, 2019

TO: JAMES D. AUSTIN, CHIEF  
ENVIRONMENTAL CERTIFICATION & COMPLIANCE SECTION  
OFFICE OF ELECTRIC GAS AND WATER

FROM: COREY STRUB, Utility Analyst 3 (Environmental),  
ENVIRONMENTAL CERTIFICATION & COMPLIANCE SECTION  
OFFICE OF ELECTRIC GAS AND WATER

SUBJECT: CASE 18-T-0083 - Application of Rochester Gas and  
Electric Corporation for a Certificate of  
Environmental Compatibility and Public Need Pursuant  
to Article VII for CM-1 & CM-4 Replacement Project,  
Town of Chili, Monroe County

RECOMMENDATION: Approval of Change Notice MC-2 as Requested

\*\*\*                      \*\*\*                      \*\*\*

In accordance with Ordering Clause (1)(b) of the  
Order Approving Rochester Gas and Electric Corporation's (RG&E)  
Certificate of Environmental Compatibility and Public Need, RG&E  
has notified staff of the Department of Public Service of one  
proposed minor change.

**Change Notice MC-2**

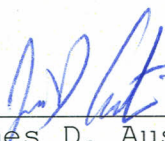
This change, as proposed by RG&E, involves changing the  
method of crossing for the CSX railway and adjacent wetlands  
from Horizontal Directional Drilling (HDD) to open cut and  
conventional boring for both the 24" and 16" pipelines.  
Rochester Gas and Electric Corporation (RG&E) has encountered  
consistent critical failures in its attempt to install the 24"

steel pipeline using Horizontal Directional Drilling (HDD) under the CSX right-of-way (ROW) and adjacent wetland features. To briefly summarize, the nature of the unconsolidated glacial till and hydraulic back pressure from the existing ground water has made the operation unusually difficult resulting in multiple critical failures of the Drill String. Continued operation and attempts to complete the HDD would require increased operational risk of environmental impact and loss of drill equipment.

All options of proceeding with pipe installation have been evaluated to ensure the existing pipeline can be replaced as expediently as possible, while simultaneously protecting the environmental resources in the project area. There are no options to re-route, as the existing ROW was obtained through eminent domain and a new route to the east would further impact the Cornerstone conservation easement. A re-route to the west of the ROW would impact an existing wetland mitigation bank. Either of these options are not considered feasible alternatives. Through the evaluation, a method of installation via open cut trench and traditional methods was deemed to be the most efficient and least environmentally impactful method of installation. RG&E has consulted with the involved agencies and their correspondence and acceptance of the proposed plans are attached.

Staff has reviewed this proposed change in the field and believes that it would not result in any net increase in adverse environmental impact associated with this project and is not directly related to any issues contested during the proceedings. We recommend that this change be approved and RGE be so notified.

REVIEWED & APPROVED:

  
James D. Austin, Chief, EC&C  
OFFICE of ELECTRIC GAS AND WATER

cc: David Bovee (David\_Bovee@rge.com)  
18-T-0083 Case File  
DPS Central File

Attachments



May 14<sup>th</sup>, 2019

**Mr. Corey Strub**  
**State of New York Department of Public Service**  
**Empire State Plaza**  
**Agency Building 3**  
**Albany, NY 12223-1350**

**Re: Case 18-T-0083**  
**CM4 & CM1 Pipeline Replacement Project**

**Certificate Ordering Clause (b)**  
**Minor Change Regarding Construction Techniques**

Dear Mr. Strub,

Ordering Clause (b) of the Certificate of Environmental Compatibility and Public Need for the CM4&CM1 Pipeline Replacement Project in case 18-T-0083 requires:

*The Applicant shall report to Department of Public Service Staff (DPS Staff) any proposed changes to the approved Project, including but not limited to proposed changes to the approved measures and techniques to be applied to the environmental management and construction of this Project; DPS Staff shall refer to the Chief of the Environmental Certification and Compliance Section (EC&C) of the Office of Electric, Gas and Water (OEGW), for approval, those proposed changes that will not cause substantial change in environmental impact or a change in the location of any portion of the certified site or right-of way (ROW) of the Project. DPS Staff will refer all other proposed changes to the Commission for approval and will afford the parties a 15-day period in which to file comments unless an emergency exists; Applicant shall not execute any proposed change until they receive written notification from the Chief of EC&C or the Commission as appropriate;*

Rochester Gas and Electric Corporation (RG&E) has encountered consistent critical failures in its attempt to install the 24" steel pipeline using Horizontal Directional Drilling (HDD) under the CSX right-of-way (ROW) and adjacent wetland features. To briefly summarize, the nature of the unconsolidated glacial till and hydraulic back pressure from the existing ground water has made the operation extra-ordinarily difficult resulting in multiple critical failures of the Drill String. Continued operation and attempts to complete the HDD would require increased operational risk of environmental impact and loss of drill equipment.

All options of proceeding with pipe installation have been evaluated to ensure the existing pipeline can be replaced in as expediently as possible, while simultaneously protecting the environmental resources in the project area. There are no options to re-route, as the existing ROW was obtained through eminent domain and a new route to the east would further impact the Cornerstone conservation easement. A re-route to the west of the ROW would impact an existing wetland mitigation bank. Either of these options are not considered feasible alternatives. Through the evaluation, a method of installation via open cut trench and traditional methods was deemed to be the most efficient and least environmentally impactful method of installation.





At this time, RG&E requests approval of installing both the 24" and 16" steel pipelines using open cut trenching methods up to the CSX crossing. At that point, both pipelines would be installed using conventional boring methods (auger boring, thrust boring, etc.) underneath the tracks consistent with CSX standards.

In implementing the necessary due diligence to evaluate this proposed change, RG&E has performed the following reviews and stakeholder consultations:

- **Project ROW through Conservation Easement:** A review of the easements obtained by Eminent Domain to establish the ROW in the Cornerstone Conservation did not identify any installation or construction restrictions in this location. Please see Attachment 1 for copies of the easements for reference.
- **New York State Department of Environmental Conservation (NYSDEC):** NYSDEC was consulted to evaluate the proposed construction approach and resulting impacts to NYSDEC wetland CI-5 in the area. Upon completion of their review, including a site visit, NYSDEC determined the change would not have any permanent / major impact on the functions and benefit of State Regulated Wetland CI-5. Please see Attachment 2 for the email summary of the DEC's review.
- **United States Army Corps of Engineers (USACE):** The USACE was presented the proposed change in construction approach and responded that the additional trench and very minor changes in impacts are covered by the Project's existing Nationwide Permit 12.. Please see Attachment 3 for the email response from the USACE Representative.
- **CSX Transportation Crossing:** RG&E notified the engineering firm providing project oversight on behalf of CSX of the proposed change in construction approach. The revised railroad crossing will be addressed under the existing Crossing Agreement with a standard drawing review to ensure CSX standards and specifications are met. Please see Attachment 4 for the email correspondence. Engineering drawings were submitted on April 30<sup>th</sup>, 2019 for their review.

The Project Team has developed updated design drawings to illustrate the proposed pipeline alignments and profiles associated with the revised construction approach in this section of ROW. Please find the updated drawings included in Attachment 5 for review.

Respectfully submitted,

David Bovee  
Project Manager

To: Corey Strub <Corey.Strub@dps.ny.gov> Cc: Steve Lawlor <steven\_lawlor@rge.com>; Bury, Brian <b bury@nyseg.com>; Jonathan Geldard <jgeldard@labellapc.com>

## **ATTACHMENT 1**

RG&E Easements

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 1871148

Book Page CIVIL

No. Pages: 5

Instrument: MISCELLANEOUS DOCUMENT

Control #: 201810120036

Index #: E2018006883

Date: 10/12/2018

Time: 6:59:33 AM

Return To:  
Lynn DiMartino  
99 Exchange Street  
Rochester, NY 14614

Total Fees Paid: \$0.00

Employee: JM

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



*ef*

At Part    of the Supreme Court of the State of New York, held for the County of Monroe in Rochester, New York at 99 Exchange Boulevard on the 11th day of October, 2018.

PRESENT: Hon. Evelyn Frazee  
Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

In the Matter of the Application of

**ROCHESTER GAS AND ELECTRIC CORPORATION**  
to acquire certain easements over real property necessary for the project known as the CM-1 and CM-4 RELOCATION PROJECT Relating to the following Tax Map Section, Block and Lot in the Town of Chili, New York: 147.01-1-8.141

ORDER OF  
ACQUISITION

Hon. Evelyn Frazee  
Index No.  
E2018006883

Petitioner Rochester Gas and Electric Corporation having commenced a proceeding to obtain an order to acquire by eminent domain certain real property described in the Petition herein and for permission to file the acquisition map pertaining thereto in the Monroe County Clerk's Office, Monroe County, New York.

Now, upon reading the Notice of Petition dated August 27, 2018, and the Petition, verified August 23, 2018, and the exhibits annexed thereto, with due proof of service thereof, and the court having found to its satisfaction that the procedural requirements of the Eminent Domain Procedure Law ("EDPL") have been met, and due deliberation having been had thereon,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Petition is granted in all respects;
2. Petitioner is authorized to file and enter this Order, together with the Acquisition Map and description of the Easement attached hereto as Exhibit A in the Monroe County Clerk's Office; and



- 2 -

3. Upon the filing and entry of the Order and the Acquisition Map with the Monroe County Clerk's Office, title to said real property sought to be acquired pursuant to the Petition shall vest in Petitioner, together with the legal right of possession; and

4. The agreed upon compensation to the respective owners of, or persons interested in, said real property sought to be acquired and described herein as described in the Petition shall be paid to Condemnees on or before October 31, 2018; and

5. Within thirty (30) days of the filing and entry of the Order and Acquisition Map, Petitioner shall cause a notice of acquisition to be published in an official newspaper in Monroe County, or served on each condemnee identified in the Petition, all in accordance with EDPL §502(B); and

6. So long as the payment outlined in Paragraph 4 above is timely made, Petitioner shall not be required to deposit a bond with the Clerk of this Court.

Dated: October 11, 2018

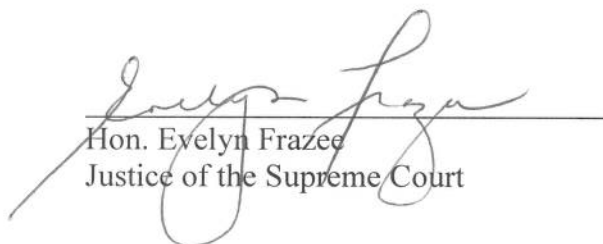
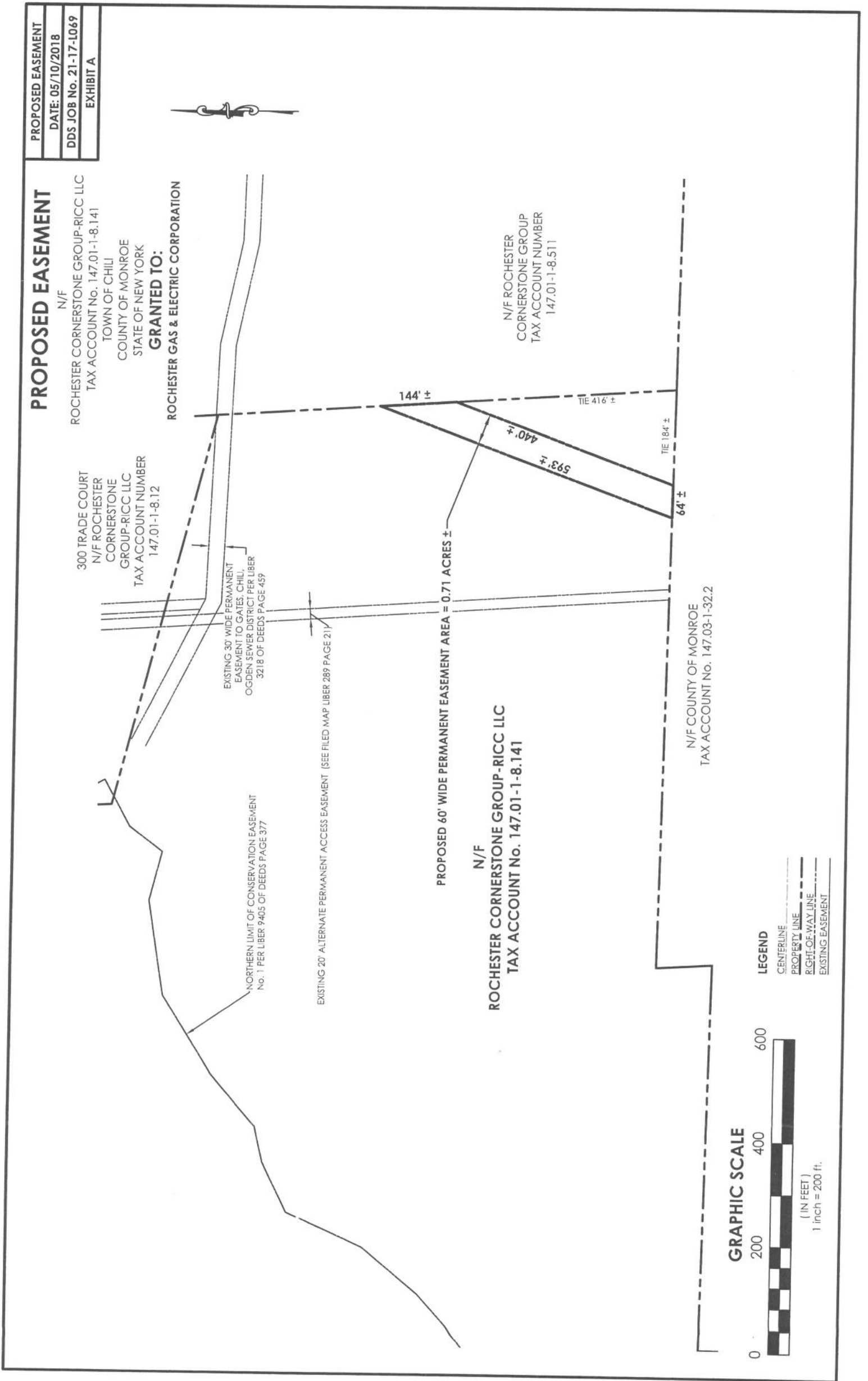
  
Hon. Evelyn Frazee  
Justice of the Supreme Court

Exhibit A

Acquisition Map

4848-2715-5320.1



MONROE COUNTY CLERK'S OFFICE

ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Receipt # 1848718

Index NOTICE OF PENDENCY

Book 1479 Page 114

No. Pages : 11

Instrument NOTICE OF PENDENCY  
CONDEMNATION

Date : 08/27/2018

Time : 04:42:07PM

Control # 201808270795

Ref 1 # E2018006883

Employee : JosieM

Return To:

ROCHESTER GAS AND ELECTRIC CORPORATION

ROCHESTERS CORNERSTONE GROUP-RICC LLC  
CORNERSTONE ENVIRONMENTAL CONSERVANCY CORP

COUNTY FEE REC NOT PENDY	\$	16.00
RECORDING FEE	\$	19.00

Total \$ 35.00

State of New York

MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK





E 2418-6883

STATE OF NEW YORK  
SUPREME COURT

## COUNTY OF MONROE

In the Matter of the Application of

**ROCHESTER GAS AND ELECTRIC CORPORATION**  
to acquire certain easements over real property necessary for the  
project known as the CM-1 and CM-4 RELOCATION PROJECTRelating to the following Tax Map Section, Block and Lot in the  
Town of Chili, New York: 147.01-1-8.141**NOTICE OF  
PENDENCY**

Hon. \_\_\_\_\_

Index No.  
\_\_\_\_\_

NOTICE IS HEREBY GIVEN, that a proceeding has been or will be commenced in this Court upon the Petition of Rochester Gas and Electric Corporation for the acquisition by eminent domain of a permanent easement over a portion of the real property situate in the Town of Chili, County of Monroe and shown on Exhibit A and described in Exhibit B, attached hereto and made a part hereof.

The names and addresses of the reputed condemnees of the real property described above, as may now be known to the Petitioner as of the date hereof, are as follows:

**Condemnees**

Rochester's Cornerstone Group – RICC, LLC

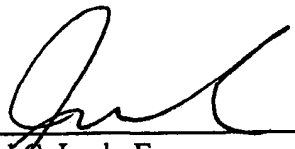
460 Spruce Blvd.  
Rochester, New York 14623The Cornerstone Environmental Conservancy  
Corp.460 Spruce Blvd.  
Rochester, NY 14623

In addition, there are or may be condemnees, e.g., tenants or others as defined by the New York Eminent Domain Procedure Law, which are unknown to Petitioner.

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The Clerk of the County of Monroe is directed to index this Notice against the condemnees stated herein and the tax map section, block and lot number stated herein.

Date: August ~~27<sup>th</sup>~~, 2018



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Jared C. Lusk, Esq.  
NIXON PEABODY LLP  
Attorneys for Petitioner  
Rochester Gas and Electric Corporation  
1300 Clinton Square  
Rochester, New York 14604  
Telephone: (585) 263-1140

Exhibit A

Acquisition Map

CAUTION: THIS DOCUMENT HAS NOT YET BEEN REVIEWED BY THE COUNTY CLERK. (See below.)

NYSCEF DOC. NO. 9

**PROPOSED EASEMENT**  
**DATE: 05/10/2018**  
**DDS JOB No. 21-17-1069**  
**EXHIBIT A**

# PROPOSED EASEMENT

N/F  
ROCHESTER CORNERSTONE GROUP-RICC LLC  
TAX ACCOUNT No. 147.01-1-8.141

**TOWN OF CHILI  
COUNTY OF MONROE  
STATE OF NEW YORK  
GRANTED TO:**

**GRANTED TO:**

**ROCHESTER GAS & ELECTRIC CORPORATION**

300 TRADE COURT  
N/F ROCHESTER  
CORNERSTONE  
GROUP-RICC LLC  
TAX ACCOUNT NUMBER  
147.01-1-8.12

EXISTING 30" WIDE PERMANENT  
EASEMENT TO GATES, CHILL,  
DOUGEN SEWER DISTRICT PER LIBER

NORTHERN LIMIT OF CONSERVATION EASEMENT  
NO. 1 PER LIBER 9405 OF DEEDS PAGE 377

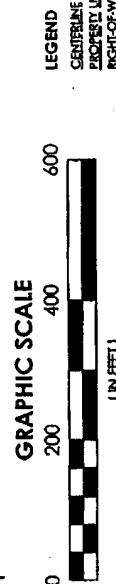
EXISTING 20' ALTERNATE PERMANENT ACCESS EASEMENT (SEE FILED MAP LIBER 289 PAGE 21) ✓

**PROPOSED 60' WIDE PERMANENT EASEMENT AREA = 0.71 ACRES ±**

N/F  
ROCHESTER CORNERSTONE GROUP-RICC LLC  
TAX ACCOUNT No. 147.01-1-8.141

N/F ROCHESTER  
CORNERSTONE GROUP  
TAX ACCOUNT NUMBER  
147.01-18.511

N/F COUNTY OF MONROE  
TAX ACCOUNT No. 147.03-1-32.2



This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b)(d) (3) (i). The filing of this document does not constitute an admission or denial of its contents. It is the responsibility of the filer to ensure that the information provided is true and accurate. This document was filed by the County Clerk's Office.



**Exhibit B**

**Proposed Easement**

**EASEMENT**

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration or payment waived the receipt and sufficiency of which is hereby acknowledged, **ROCHESTER'S CORNERSTONE GROUP-RICC, LLC** with a mailing address of 460 Spruce Blvd., Rochester, New York 14623, hereinafter collectively called "Grantor", does hereby grant and convey unto **ROCHESTER GAS AND ELECTRIC CORPORATION**, a New York Corporation, 89 East Avenue, in the City of Rochester, Monroe County, New York, hereinafter called "Grantee", its lessees, licensees, successors and assigns, forever a permanent easement and right of way (the "Easement Premises") in, upon, over, under, above, across, along and through a portion of the premises known as **600 TRADE COURT, Tax Account No. 147.01-1-8.141**, Town of **CHILI**, County of **MONROE**, New York and being the same premises described in a Deed recorded in the Monroe County Clerk's Office in **Liber 8439** of Deeds at **Page 652**, (the "Property") to, from time to time, lay, construct, reconstruct, increase, enlarge, raise, lower, replace, erect, relocate, extend, operate, inspect, maintain, protect, move, repair and replace at its pleasure:

Any and all conduits, mains, pipes, regulators, valves, vaults, meters, stacks, manholes, cabinets, services and any and all other appurtenances and fixtures which the Grantee shall require now and in the future within the Easement Premises for the underground transmission and/or distribution of gas by the Grantee; provided that manhole covers, valves, cabinets and stack may be located at or above ground level within said Easement Premises.

The Easement Premises for all of the foregoing are more particularly described as follows:

**A strip of land sixty (60) feet in width as more particularly described on "Exhibit A" attached hereto and made a part hereof and as depicted on that certain map set forth on Exhibit "B" attached hereto and made a part hereof.**

The Grantee, its employees, servants, agents, contractors and its successors and assigns, are hereby expressly given and granted the right to:

A. Assign this easement and right of way, or any part thereof, or interest therein, and the same shall be divisible among two or more owners as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

B. Free ingress and egress over the Easement Premises for all of the above purposes, as well as the right (but not the duty) to trim, cut, and remove at any time by manual and mechanical means trees and other vegetation, structures and other obstructions, to eliminate vegetation, and modify the growth of trees, vegetation, growth, structures or obstructions within the Easement Premises that, in the reasonable judgment of Grantee, may interfere with the construction, operation or maintenance of its equipment or facilities or otherwise endanger the rights and privileges granted herein; and the right to prohibit the construction of, and/or remove, any building(s), structure(s) or improvements (including planting of trees) within the Easement Premises and the right to keep the surface of ground above its underground gas equipment and facilities free from structures, improvement and growth which, in the reasonable judgment of Grantee may interfere with the proper construction, maintenance or operation of said underground equipment or facilities or that may interfere with the rights and privileges granted hereunder. Notwithstanding the foregoing, nothing contained within this Easement shall prohibit Grantor from constructing, maintaining, enlarging or repairing any sidewalk, driveway, parking lot or path over and across the Easement Premises. Grantor shall coordinate with Grantee prior to any such construction. Grantee shall maintain the equipment and facilities located within the Easement Area in compliance with all applicable federal, state, and local laws, rules and regulations.

C. To the extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor, and its officers, directors, employees, agents, affiliates, successors, and assigns (herein collectively referred to as "Indemnified Party") from and against any and all claims, costs, liabilities, suits, judgments, losses, damages, demands and expenses, including without limitations, reasonable attorneys' fees, arising out of or alleged to have arisen out of personal injuries, including death, or damage to property of any kind in connection with any of the equipment and/or facilities installed by Grantee pursuant to this Easement or in connection with the exercise by Grantee of its rights under this Easement; provided, however, the Grantee shall not be obligated to indemnify the Indemnified Party or its Affiliates (a) to the extent any such losses are caused by the gross negligence or willful misconduct of the Indemnified Party, its agents, employees, contractors, officers, consultants or other representatives or the other Affiliates, (b) to the extent any such losses are caused merely by the discovery of or existence of any pre-existing condition on the Property (including, without limitation, any pre-existing environmental contamination), and/or (c) for consequential, incidental, indirect, or exemplary damages. "Affiliate" means, with respect to any Person (as hereinafter defined), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation, or other entity. The Grantee's indemnity obligation hereunder shall survive until the termination of this Easement.

D. During construction of the conduits, mains, pipes, regulators, valves, vaults, meters, stacks, manholes, cabinets, services and any and all other appurtenances and fixtures required for the underground transmission and/or distribution of gas by the Grantee ("Grantee's Construction Work"), the Grantee shall, at its sole cost and expense, procure and keep in force and effect:

Commercial General Liability, including Personal Injury; Broad Form Property Damage	\$3,000,000 (per occurrence)
Automobile Liability, for all owned, hired, and non-owned vehicles	\$1,000,000 (combined single limit)

Umbrella Liability	\$5,000,000 (per occurrence/aggregate)
Worker's Compensation, including Disability and Employer's Liability	As required by law

The Grantor shall be named as additional insured on the above policies, with the exception of the Workers' Compensation policy. All such insurance must be evidenced by certificates of insurance endorsed as required above. Grantor shall be entitled, upon request, to a copy of the endorsement to Grantee's insurance policies adding Grantor as an additional insured, for any period of time applicable to Grantee's work hereunder. Any policy deductibles shall be borne by the Grantee. All insurance coverage and additional insured endorsements that the Grantee is required to provide pursuant to this section shall be primary and non-contributory and shall be required to be exhausted, through all available primary, excess or umbrella layers before other insurance that may be carried by the Grantor shall be required to respond. Notwithstanding anything to the contrary contained in this Easement, in no event shall the Grantee be required to maintain the insurance set forth herein after the date upon which completion of the Grantee's Construction Work has occurred, which date is anticipated to be on or prior to September 1, 2019.

This grant is made and accepted upon the express conditions that after any exercise of the rights and privileges granted hereunder, the Grantee shall leave the Easement Premises in as good condition as found, and that the Grantee shall make reasonable compensation to the Grantor for any damage (except as permitted specifically hereunder) to the property of Grantor caused by their exercise of the rights and privileges granted hereunder. Grantee shall use reasonable efforts when exercising its rights under this Easement to minimize any interference with the use of the remainder of the Property (excluding the Easement Premises) by Grantor, Grantor's tenants, and their respective invitees. In the event Grantee's exercise of its rights under this Easement shall damage or disrupt any sidewalk, driveway, parking lot, path, landscape features or other structures or improvements existing or to be constructed on the remainder of the Property (outside of the Easement Premises), Grantee shall restore any such improvement to as good condition as found at the commencement of Grantee's work.

This Instrument shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Grantee acknowledges that the rights granted pursuant to this Easement are non-exclusive and that nothing contained herein shall prohibit Grantor from using the Easement Premises in a manner permitted under this Easement, including without limitation the granting of other easements in accordance with the terms hereof. Grantee shall be responsible for any and all costs associated with recording this Easement.

The Grantor hereby warrants the title to the rights above granted.

IN WITNESS WHEREOF, each of the Grantor and the Grantee has hereunto set its hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2018.

[Signature on next page]

## ROCHESTER GAS AND ELECTRIC CORPORATION

By: \_\_\_\_\_  
ROSS HENDERSON

Its: Vice President General Services

## ROCHESTER'S CORNERSTONE GROUP-RICC LP

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of New York)  
County of Monroe) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary

Public in and for said State, personally appeared ROSS HENDERSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary

State of New York)  
County of Monroe) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary

Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary



EXHIBIT "A"

## Description of the Easement Premises

All That Tract or Parcel of Land situated in part of Town Lot No. 34 of the 3000 Acre Tract, also known as the 6th Tract in Township 2, Range 1 of the John Smith Allotment of the Mill Seat Tract in the Phelps & Gorham Purchase in the Town of Chili, County of Monroe and State of New York, being more particularly bounded and described as follows:

Commencing at the southwesterly property corner of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a Tax Account Number of 147.01-1-8.511;

thence westerly along the northerly property line of lands now or formerly of County of Monroe, having a Tax Account Number of 147.03-1-32.2, a distance of 184± feet to a point, said point being the true point and place of beginning;

Thence the following four courses:

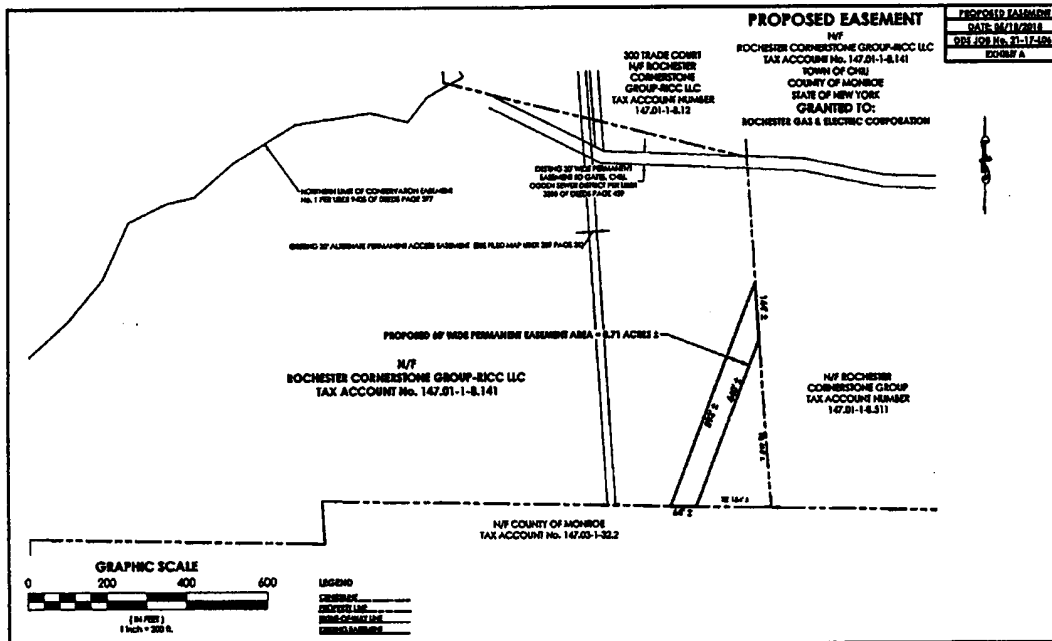
(1) Continuing along the said the northerly property line of lands now or formerly of County of Monroe a distance of 64± feet to a point;

(2) Northeasterly and through the lands now or formerly of Rochester's Cornerstone Group - RICC, LLC a distance of 593± feet to a point on the westerly property line of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a Tax Account Number of 147.01-1-8.511;

(3) Southerly along said westerly property line of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC a distance of 144± feet to a point, said point being 416± feet northerly of the southwesterly property corner of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC as measured along the westerly property line of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC;

(4) Southwesterly and parallel to course two through the lands now or formerly of Rochester's Cornerstone Group - RICC, LLC a distance of 440± feet to a point on said northerly property line of lands now or formerly of County of Monroe, said point being the true point and place of beginning.

Being and hereby intending to describe a proposed 60 foot wide Permanent Easement having an area of 0.71± acres and shown as Proposed 60 Foot Wide Permanent Easement Area on a Proposed Utility Easement Map prepared by The DDS Companies entitled "Proposed Utility Easement for Lands Now or Formerly of lands now or formerly of Rochester Cornerstone Group-RICC LLC, Tax Account Number of 147.01-1-8.141", being DDS Job Number 21-17-L069, dated May 10, 2018.

**EXHIBIT "B"****Map of the Easement Premises**

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Return To:  
Lynn DiMartino  
99 Exchange Street  
Rochester, NY 14614

Receipt # 1871147

Book Page CIVIL

No. Pages: 5

Instrument: MISCELLANEOUS DOCUMENT

Control #: 201810120035

Index #: E2018006884

Date: 10/12/2018

Time: 6:59:22 AM

Total Fees Paid: \$0.00

Employee: JM

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK





At Part    of the Supreme Court of  
the State of New York, held for the  
County of Monroe in Rochester,  
New York at 99 Exchange  
Boulevard on the 11th day of  
October, 2018.

PRESENT: Hon. Evelyn Frazee  
Justice of the Supreme Court

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

In the Matter of the Application of

**ROCHESTER GAS AND ELECTRIC CORPORATION**  
to acquire certain easements over real property necessary for the  
project known as the CM-1 and CM-4 RELOCATION PROJECT  
Relating to the following Tax Map Section, Block and Lot in the  
Town of Chili, New York: 147.01-1-8.511

ORDER OF  
ACQUISITION

Hon. Evelyn Frazee  
Index No.  
E2018006884

Petitioner Rochester Gas and Electric Corporation having commenced a proceeding to obtain an order to acquire by eminent domain certain real property described in the Petition herein and for permission to file the acquisition map pertaining thereto in the Monroe County Clerk's Office, Monroe County, New York.

Now, upon reading the Notice of Petition dated August 27, 2018, and the Petition, verified August 23, 2018, and the exhibits annexed thereto, with due proof of service thereof, and the court having found to its satisfaction that the procedural requirements of the Eminent Domain Procedure Law ("EDPL") have been met, and due deliberation having been had thereon,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Petition is granted in all respects;
2. Petitioner is authorized to file and enter this Order, together with the Acquisition Map and description of the Easement attached hereto as Exhibit A in the Monroe County Clerk's Office; and

- 2 -

3. Upon the filing and entry of the Order and the Acquisition Map with the Monroe County Clerk's Office, title to said real property sought to be acquired pursuant to the Petition shall vest in Petitioner, together with the legal right of possession; and

4. The agreed upon compensation to the respective owners of, or persons interested in, said real property sought to be acquired and described herein as described in the Petition shall be paid to Condemnees on or before October 31, 2018; and

5. Within thirty (30) days of the filing and entry of the Order and Acquisition Map, Petitioner shall cause a notice of acquisition to be published in an official newspaper in Monroe County, or served on each condemnee identified in the Petition, all in accordance with EDPL §502(B); and

6. So long as the payment outlined in Paragraph 4 above is timely made, Petitioner shall not be required to deposit a bond with the Clerk of this Court.

Dated: October 11, 2018


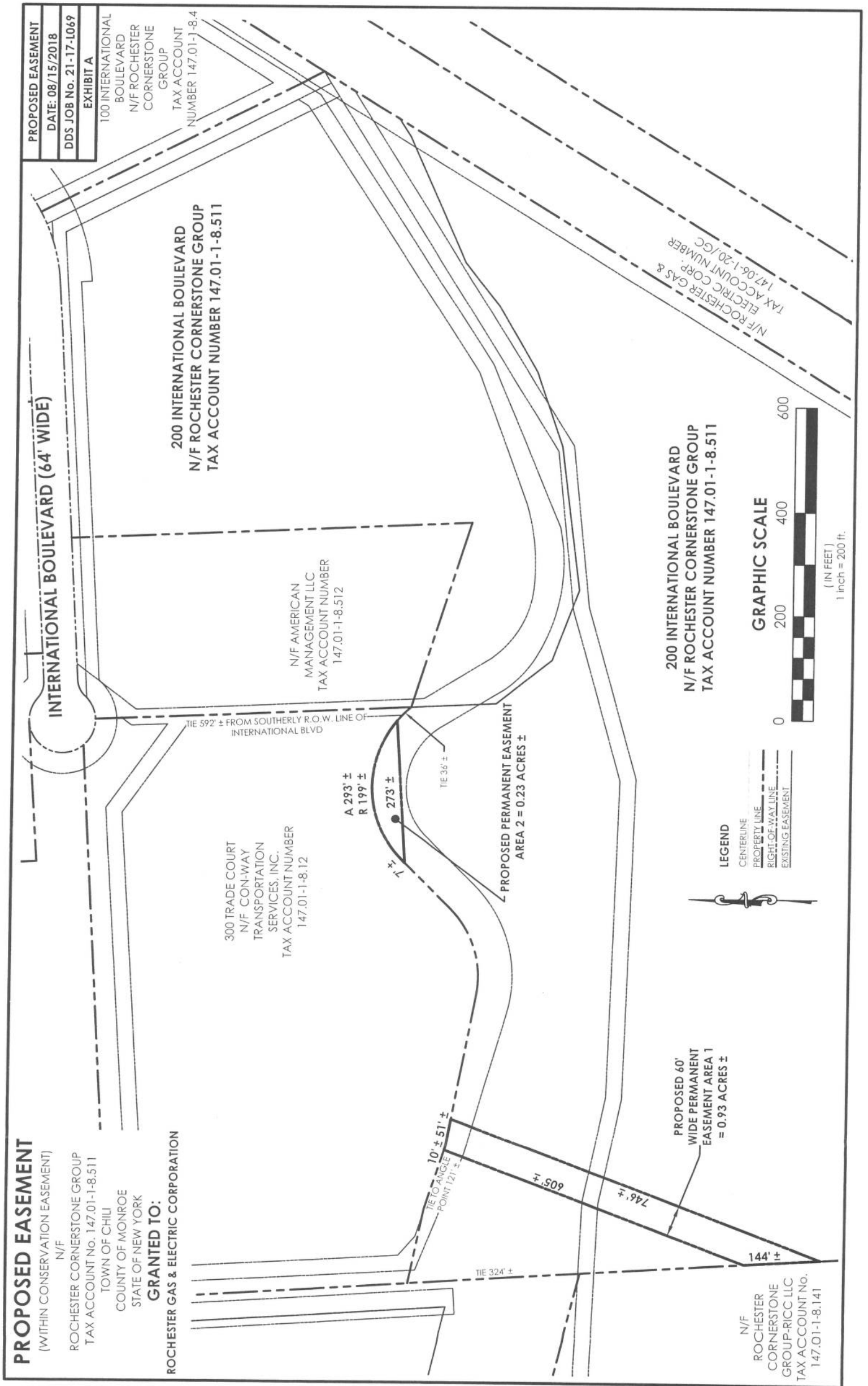
  
 Hon. Evelyn Frazee  
 Justice of the Supreme Court

Exhibit A  
Acquisition Map

4828-9718-7192.1



MONROE COUNTY CLERK'S OFFICE  
ROCHESTER, NY

THIS IS NOT A BILL. THIS IS YOUR RECEIPT

Receipt # 1848742

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Instrument NOTICE OF PENDENCY  
CONDEMNATION

Date : 08/27/2018

Time : 05:03:19PM

ROCHESTER GAS AND ELECTRIC CORPORATION

Control # 201808270827

CORNERSTONE ENVIRONMENTAL CONSERVANCY CORP  
ROCHESTERS CORNERSTONE GROUP-RICC LLC

Ref 1 # E2018006884

Employee : JosieM

COUNTY FEE REC NOT PENDY	\$	16.00
RECORDING FEE	\$	19.00

Total \$ 35.00

State of New York

MONROE COUNTY CLERK'S OFFICE

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SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



FI182-201808270827-11



STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

In the Matter of the Application of

**ROCHESTER GAS AND ELECTRIC CORPORATION**  
to acquire certain easements over real property necessary for the  
project known as the CM-1 and CM-4 RELOCATION PROJECTRelating to the following Tax Map Section, Block and Lot in the  
Town of Chili, New York: 147.01-1-8.511**NOTICE OF  
PENDENCY**

Hon. \_\_\_\_\_

Index No.  
\_\_\_\_\_

NOTICE IS HEREBY GIVEN, that a proceeding has been or will be commenced in this Court upon the Petition of Rochester Gas and Electric Corporation for the acquisition by eminent domain of a permanent easement over a portion of the real property situate in the Town of Chili, County of Monroe and shown on Exhibit A and described in Exhibit B, attached hereto and made a part hereof.

The names and addresses of the reputed condemnees of the real property described above, as may now be known to the Petitioner as of the date hereof, are as follows:

**Condemnees**

Rochester's Cornerstone Group – RICC, LLC

460 Spruce Blvd.  
Rochester, New York 14623The Cornerstone Environmental Conservancy  
Corp.460 Spruce Blvd.  
Rochester, NY 14623

In addition, there are or may be condemnees, e.g., tenants or others as defined by the New York Eminent Domain Procedure Law, which are unknown to Petitioner.

- 2 -

The Clerk of the County of Monroe is directed to index this Notice against the condemnees stated herein and the tax map section, block and lot number stated herein.

Date: August 27, 2018



Jared C. Lusk, Esq.

NIXON PEABODY LLP

Attorneys for Petitioner

Rochester Gas and Electric Corporation

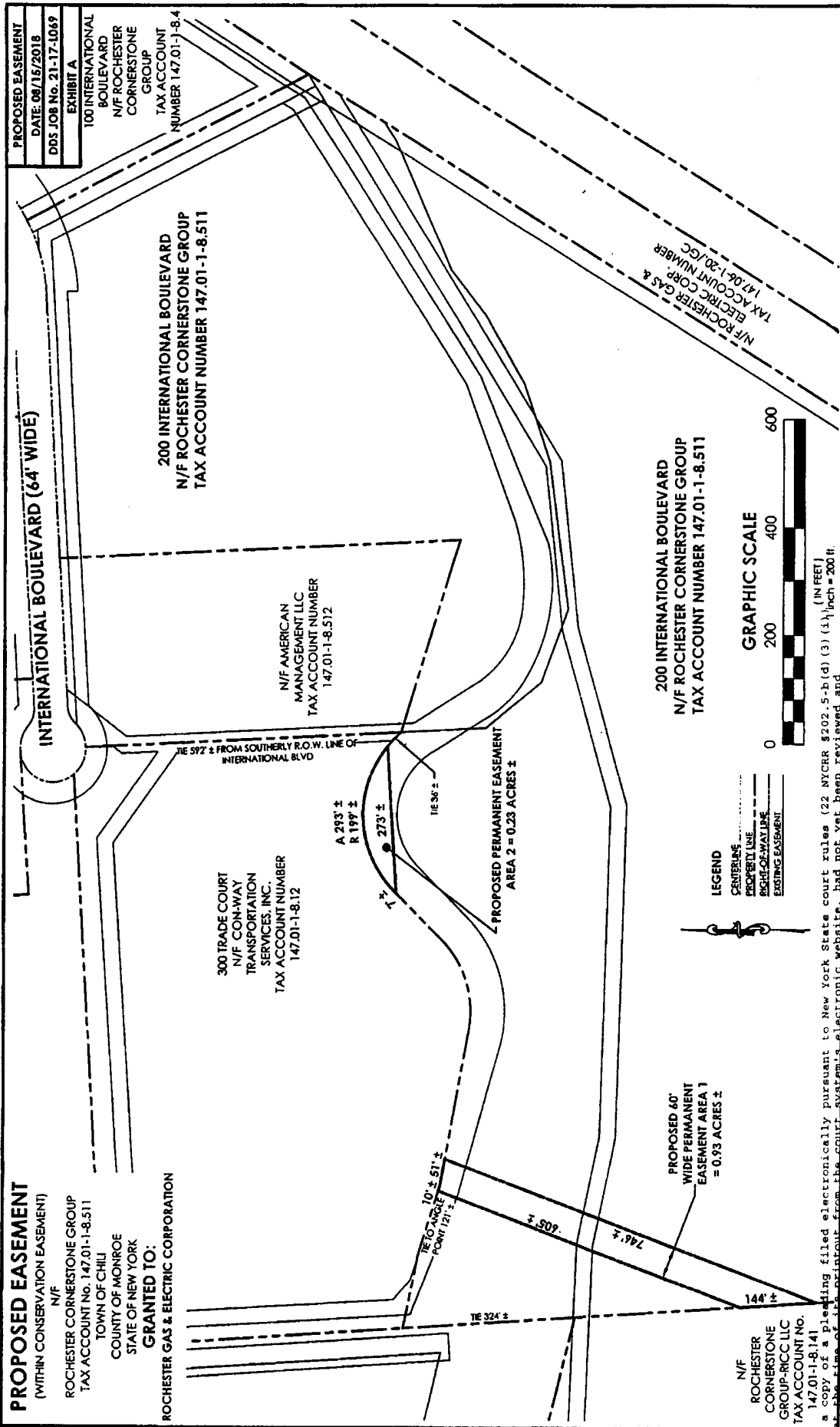
1300 Clinton Square

Rochester, New York 14604

Telephone: (585) 263-1140

**Exhibit A**

**Acquisition Map**



**Exhibit B**

**Proposed Easement**

**EASEMENT**

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration or payment waived the receipt and sufficiency of which is hereby acknowledged, **ROCHESTER'S CORNERSTONE GROUP-RICC, LLC** with a mailing address of 460 Spruce Blvd., Rochester, New York 14623, hereinafter collectively called "Grantor", does hereby grant and convey unto **ROCHESTER GAS AND ELECTRIC CORPORATION**, a New York Corporation, 89 East Avenue, in the City of Rochester, Monroe County, New York, hereinafter called "Grantee", its lessees, licensees, successors and assigns, forever a permanent easement and right of way (the "Easement Premises") in, upon, over, under, above, across, along and through a portion of the premises known as **200 INTERNATIONAL BLVD., Tax Account No. 147.01-1-8.511**, Town of **CHILI**, County of **MONROE**, New York and being the same premises described in a Deed recorded in the Monroe County Clerk's Office in **Lib 8439** of Deeds at **Page 652** (the "Property") to, from time to time, lay, construct, reconstruct, increase, enlarge, raise, lower, replace, erect, relocate, extend, operate, inspect, maintain, protect, move, repair and replace at its pleasure:

Any and all conduits, mains, pipes, regulators, valves, vaults, meters, stacks, manholes, cabinets, services and any and all other appurtenances and fixtures which the Grantee shall require now and in the future within the Easement Premises for the underground transmission and/or distribution of gas by the Grantee; provided that manhole covers, valves, cabinets and stack may be located at or above ground level within said Easement Premises.

The Easement Premises for all of the foregoing are more particularly described as follows:

**A strip of land sixty (60) feet in width and an approximately .23 acre strip of land as more particularly described on "Exhibit A" attached hereto and made a part hereof and as depicted on that certain map set forth on Exhibit "B" attached hereto and made a part hereof.**

The Grantee, its employees, servants, agents, contractors and its successors and assigns, are hereby expressly given and granted the right to:

A. Assign this easement and right of way, or any part thereof, or interest therein, and the same shall be divisible among two or more owners as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

B. Free ingress and egress over the Easement Premises for all of the above purposes, as well as the right (but not the duty) to trim, cut, and remove at any time by manual and mechanical means trees and other vegetation, structures and other obstructions, to eliminate vegetation, and modify the growth of trees, vegetation, growth, structures or obstructions within the Easement Premises that, in the reasonable judgment of Grantee, may interfere with the construction, operation or maintenance of its equipment or facilities or otherwise endanger the rights and privileges granted herein; and the right to prohibit the construction of, and/or remove, any building(s), structure(s) or improvements (including planting of trees) within the Easement Premises and the right to keep the surface of ground above its underground gas equipment and facilities free from structures, improvement and growth which, in the reasonable judgment of Grantee may interfere with the proper construction, maintenance or operation of said underground equipment or facilities or that may interfere with the rights and privileges granted hereunder. Notwithstanding the foregoing, nothing contained within this Easement shall prohibit Grantor from constructing, maintaining, enlarging or repairing any sidewalk, driveway, parking lot or path over and across the Easement Premises. Grantor shall coordinate with Grantee prior to any such construction. Grantee shall maintain the equipment and facilities located within the Easement Area in compliance with all applicable federal, state, and local laws, rules and regulations.

C. To the extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor, and its officers, directors, employees, agents, affiliates, successors, and assigns (herein collectively referred to as "Indemnified Party") from and against any and all claims, costs, liabilities, suits, judgments, losses, damages, demands and expenses, including without limitations, reasonable attorneys' fees, arising out of or alleged to have arisen out of personal injuries, including death, or damage to property of any kind in connection with any of the equipment and/or facilities installed by Grantee pursuant to this Easement or in connection with the exercise by Grantee of its rights under this Easement; provided, however, the Grantee shall not be obligated to indemnify the Indemnified Party or its Affiliates (a) to the extent any such losses are caused by the gross negligence or willful misconduct of the Indemnified Party, its agents, employees, contractors, officers, consultants or other representatives or the other Affiliates, (b) to the extent any such losses are caused merely by the discovery of or existence of any pre-existing condition on the Property (including, without limitation, any pre-existing environmental contamination), and/or (c) for consequential, incidental, indirect, or exemplary damages. "Affiliate" means, with respect to any Person (as hereinafter defined), any Person that controls, is controlled by or is under common control with such Person, together with its and their respective partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation, or other entity. The Grantee's indemnity obligation hereunder shall survive until the termination of this Easement.

D. During construction of the conduits, mains, pipes, regulators, valves, vaults, meters, stacks, manholes, cabinets, services and any and all other appurtenances and fixtures required for the underground transmission and/or distribution of gas by the Grantee ("Grantee's Construction Work"), the Grantee shall, at its sole cost and expense, procure and keep in force and effect:

Commercial General Liability, including Personal Injury; Broad Form Property Damage	\$3,000,000 (per occurrence)
Automobile Liability, for all owned, hired, and non-owned vehicles	\$1,000,000 (combined single limit)

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5(d)) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

Umbrella Liability

\$5,000,000 (per  
occurrence/aggregate)Worker's Compensation, including Disability and  
Employer's Liability

As required by law

The Grantor shall be named as additional insured on the above policies, with the exception of the Workers' Compensation policy. All such insurance must be evidenced by certificates of insurance endorsed as required above. Grantor shall be entitled, upon request, to a copy of the endorsement to Grantee's insurance policies adding Grantor as an additional insured, for any period of time applicable to Grantee's work hereunder. Any policy deductibles shall be borne by the Grantee. All insurance coverage and additional insured endorsements that the Grantee is required to provide pursuant to this section shall be primary and non-contributory and shall be required to be exhausted, through all available primary, excess or umbrella layers before other insurance that may be carried by the Grantor shall be required to respond. Notwithstanding anything to the contrary contained in this Easement, in no event shall the Grantee be required to maintain the insurance set forth herein after the date upon which completion of the Grantee's Construction Work has occurred, which date is anticipated to be on or prior to September 1, 2019.

This grant is made and accepted upon the express conditions that after any exercise of the rights and privileges granted hereunder, the Grantee shall leave the Easement Premises in as good condition as found, and that the Grantee shall make reasonable compensation to the Grantor for any damage (except as permitted specifically hereunder) to the property of Grantor caused by their exercise of the rights and privileges granted hereunder. Grantee shall use reasonable efforts when exercising its rights under this Easement to minimize any interference with the use of the remainder of the Property (excluding the Easement Premises) by Grantor, Grantor's tenants, and their respective invitees. In the event Grantee's exercise of its rights under this Easement shall damage or disrupt any sidewalk, driveway, parking lot, path, landscape features or other structures or improvements existing or to be constructed on the remainder of the Property (outside of the Easement Premises), Grantee shall restore any such improvement to as good condition as found at the commencement of Grantee's work.

This Instrument shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Grantee acknowledges that the rights granted pursuant to this Easement are non-exclusive and that nothing contained herein shall prohibit Grantor from using the Easement Premises in a manner permitted under this Easement, including without limitation the granting of other easements in accordance with the terms hereof. Grantee shall be responsible for any and all costs associated with recording this Easement.

The Grantor hereby warrants the title to the rights above granted.

IN WITNESS WHEREOF, each of the Grantor and the Grantee has hereunto set its hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2018.

[Signature on next page]

## ROCHESTER GAS AND ELECTRIC CORPORATION

By: \_\_\_\_\_  
ROSS HENDERSONIts: Vice President General Services

## ROCHESTER'S CORNERSTONE GROUP-RICC, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of New York)  
County of Monroe) ss:On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a  
Notary

Public in and for said State, personally appeared **ROSS HENDERSON**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NotaryState of New York)  
County of Monroe) ss:On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a  
Notary

Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary



**EXHIBIT "A"**

## Description of the Easement Premises

All that tract or parcel of land situated in part of Town Lot 34 of the 3000 Acre Tract also known as the 6th Tract, Township 2, Range 1, John Smith Allotment, Mill Seat Tract, Phelps & Gorham Purchase, Town of Chili, County of Monroe, State of New York and being more particularly described as follows:

Commencing at an angle point on the southerly property line of lands now or formerly of Conway Transportation Services, Inc. having a tax account number of 147.01-1-8.12. Thence southeasterly along said property line a distance of 121 feet  $\pm$  to a point, said point being the true point and place of beginning.

Thence the following five courses:

1. Continuing along said southerly property line of Conway Transportation Services, Inc. a distance of 10 feet  $\pm$  to an angle point;
2. Thence continuing along said southerly property line of Conway Transportation Services, Inc. a distance of 51 feet  $\pm$  to a point;
3. Thence southwesterly through the lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a tax account number of 147.01-1-8.511 a distance of 746 feet  $\pm$  to a point on the easterly property line of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a tax account number of 147.01-1-8.141;
4. Thence northerly along said easterly property line of lands now or formerly of Rochester's Cornerstone Group - RICC, LLC a distance of 144 feet  $\pm$  to a point, said point being southerly a distance of 324 feet  $\pm$  as measured along said easterly line of Rochester's Cornerstone Group - RICC, LLC from the northwesterly property corner of said lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a tax account number of 147.01-1-8.511;
5. Thence northeasterly and parallel to course three through the lands now or formerly of Rochester's Cornerstone Group - RICC, LLC a distance of 605 feet  $\pm$  to a point on the southerly property line of lands now or formerly of Conway Transportation Services, Inc., said point being the true point and place of beginning.

Being and hereby intending to describe a proposed 60-foot-wide permanent easement having an area of 0.93 acres  $\pm$  and shown as Proposed 60' Wide Permanent Easement Area 1 on a Proposed Utility Easement map prepared by The DDS Companies entitled "Proposed Utility Easement for Lands Now or Formerly of lands now or formerly of Rochester Cornerstone Group, tax account number of 147.01-1-8.511", being DDS Job Number 21-17-L069 dated 08/15/2018.

ALSO, All that tract or parcel of land situated in part of Town Lot 34 of the 3000 Acre Tract also known as the 6th Tract, Township 2, Range 1, John Smith Allotment, Mill Seat Tract, Phelps & Gorham Purchase, Town of Chili, County of Monroe, State of New York and being more particularly described as follows:

Commencing at the southeasterly property corner of lands now or formerly of Conway Transportation Services, Inc. having a tax account number of 147.01-1-8.12. Thence northwesterly along the southerly property line of said Conway Transportation Services, Inc. a distance of 36 feet  $\pm$  to a point, said point being the true point and place of beginning.

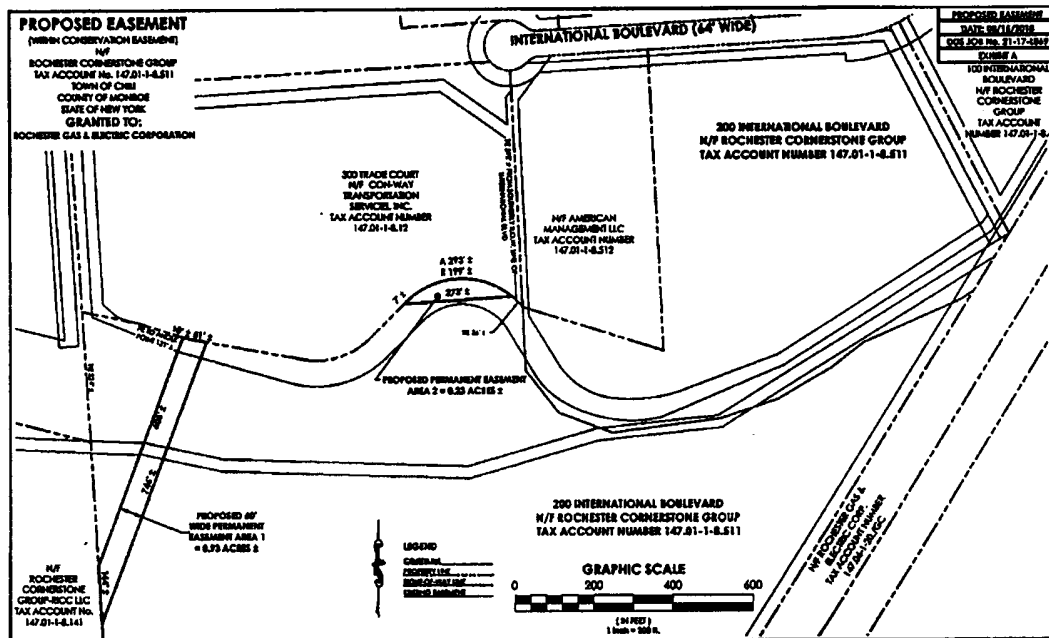
Thence the following three courses:

1. Westerly through the lands now or formerly of Rochester's Cornerstone Group - RICC, LLC, having a tax account number of 147.01-1-8.511 a distance of 273 feet  $\pm$  to a point on the aforementioned southerly property line of said Conway Transportation Services, Inc.;
2. Thence along said southerly property line of said Conway Transportation Services, Inc. a distance of 7 feet  $\pm$  to a point of curvature;
3. Thence continuing along said southerly property line of said Conway Transportation Services, Inc. on a curve turning to the right along an arc distance of 293 feet  $\pm$  and a radius of 199 feet  $\pm$  to a point of curvature, said point being the true point and place of beginning.

Being and hereby intending to describe a proposed permanent easement having an area of 0.23 acres  $\pm$  and shown as Proposed Permanent Easement Area 2 on a Proposed Utility Easement map prepared by The DDS Companies entitled "Proposed Utility Easement for Lands Now or Formerly of lands now or formerly of Rochester Cornerstone Group, tax account number of 147.01-1-8.511", being DDS Job Number 21-17-L069 dated 08/15/2018.

**EXHIBIT "B"**

## Map of the Easement Premises



## **ATTACHMENT 2**

NYSDEC Email Correspondence

**Bovee, David**

**From:** Miller, Steve (DEC) <steve.miller@dec.ny.gov>  
**Sent:** Wednesday, May 01, 2019 4:37 PM  
**To:** Bovee, David  
**Cc:** Strub, Corey (DPS); Crounse, Sita X (DEC); Cady-Poulin, Kristen K (DEC); Jacobson, Roy (DEC)  
**Subject:** EXTERNAL: CM-1 & CM-4

Dave,

RE: CM-1 & CM-5  
Proposal to trench through Stte Wetland CI-5  
Town of Chili – Monroe County

After reviewing the proposal and reasoning for this change in operations I have determined that this change would be acceptable to the Department.

As originally proposed the lines were to be hydraulically drilled through the wetlands, It is my understanding that the nature of the unconsolidated glacial till and the hydraulic back pressure from the existing ground water will make this operation unnecessarily risky with an increased possibly of Fac-out and releasing of drilling fluids, an environmental contaminant in theme selves, into the wetland and risk loss of the drill equipment.

Although trenching the utility through the wetlands is a P(X) activity . After examining and considering the information provided in previous communications and during a site visit I have evaluated this change using the 6NYCRR Pat 663.5(e) (below)

Weighing Standards		
These weighing standards must be applied to all activities identified as P(X) in subdivision 663.4 (d), and to all those activities listed as P(C) or (N) in subdivision 663.4 (d) or not listed in subdivision 663.4 (d) that do not meet the three tests of compatibility listed in paragraph 663.5 (e) (1). If the proposed activity is listed as (X) or cannot meet the three tests for compatibility, then a permit may be issued only if the proposed activity meets each of the standards below for the class of wetland affected:		
For Class:	Standard	
1,2,3,4	the proposed activity must be compatible with the public health and welfare, <b>moving/ replacing degraded gas lines</b>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
	be the only practicable alternative that could accomplish the applicant's objectives and <b>Applicant has taken ownership of the Right of Way through eminent domain based on a previously approved plan.</b>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
	have no practicable alternative on a site that is not a freshwater wetland or adjacent area. <b>Do to complications caused by the hydrology and geology of the site trenching through the wetland is the only practicable alternative. Repeated Attempts to hydraulically drill through the area has resulted in multiple fracouts and broken equipment.</b>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
1,2,3	the proposed activity must minimize degradation to, or loss of, any part of the wetland or its adjacent area and <b>The impacts to the wetland will be temporary as once the pipe is installed the cut will be back filled. This is going to be accomplished incrementally as the project proceed through the wetland.</b>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
1,2,3	must minimize any adverse impacts on the functions and benefits that the wetland provides. <b>RG&amp;E has verbally agreed to plug the trench at each end of the crossing as well as</b>	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N

**in areas that may cause changes in the Hydrology of streams and other waters with in the wetland. These determinations will be made in the field and will reduce the loss of wetland benefit and functions**

**4** the proposed activity must make a reasonable effort to minimize degradation to, or loss of, any part of the wetland or its adjacent area.

☐ Y ☐ N

#### Class 1 Wetlands

Class 1 wetlands provide the most critical of the state's wetland benefits, reduction of which is acceptable only in the most unusual circumstances. A permit shall be issued only if it is determined that the proposed activity satisfied a compelling economic or social need that clearly and substantially outweighs the loss of or detriment to the benefit(s) of the Class I wetland.

#### Class II Wetlands

Class II wetlands provide important wetland benefits, the loss of which is acceptable only in very limited circumstances. A permit shall be issued only if it is determined that the proposed activity satisfies a pressing economic or social need that clearly outweighs the loss of or detriment to the benefit(s) of the Class II wetland.

#### Class III Wetlands

Class III wetlands supply wetland benefits, the loss of which is acceptable only after the exercise of caution and discernment. A permit shall be issued only if it is determined that the proposed activity satisfies an economic or social need that outweighs the loss of or detriment to the benefit(s) of the Class III wetland.

#### Class IV Wetlands

Class IV wetland provide some wildlife and open space benefits and may provide other benefits cited in the Act. Therefore, wanton or uncontrolled degradation or loss of Class IV wetlands is unacceptable. A permit shall be issued for a proposed activity in a Class IV wetland only if it is determined that the activity would be the only practicable alternative which could accomplish the applicant's objectives.

Based on the above I have determined that the proposed changes to the wetland should not have any permanent/  
major impact on the functions and benefit of State Regulated Wetland CI-5.

I would encourage DPS and RG&E to continue with developing the plans for this portion of the project. Please be sure to submit these plans to the Department (Steve Miller and Kristine Cady-Poulin) for review in a timely fashion.

Thank you ,

**Steven Miller**

Biologist (Ecology), BEH

**New York State Department of Environmental Conservation**

6274 East Avon-Lima Rd, Avon, NY 14414

P: (585) 226-5442 | [steve.miller@dec.ny.gov](mailto:steve.miller@dec.ny.gov)

## **ATTACHMENT 3**

USACE Email Correspondence

## Geldard, Jonathan

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**From:** Adams, Heather L CIV USARMY CELRB (US) <Heather.L.Adams@usace.army.mil>  
**Sent:** Monday, May 13, 2019 1:22 PM  
**To:** Bury, Brian  
**Cc:** Bovee, David; Geldard, Jonathan  
**Subject:** RE: RG&E Permit LRB-2018-00799

Hi Brian,

From what you've described, the additional trench and very minor changes in impacts are covered by the NWP 12. I will note these changes in the administrative record.

My apologies for the delay, we are once again in our busy season! Any further questions, please feel free to call.

Thank you,  
Heather

-----Original Message-----

From: Bury, Brian [mailto:bbury@nyseg.com]  
Sent: Tuesday, May 7, 2019 12:37 PM  
To: Adams, Heather L CIV USARMY CELRB (US) <Heather.L.Adams@usace.army.mil>  
Cc: Bovee, David <David\_Bovee@rge.com>; Geldard, Jonathan <JGeldard@LaBellaPC.com>  
Subject: [Non-DoD Source] RE: RG&E Permit LRB-2018-00799

Hi Heather,

Just following up to see if you have had a chance to review this situation.

Thanks,

-Brian

From: Bury, Brian  
Sent: Monday, April 22, 2019 2:55 PM  
To: Adams, Heather L CIV USARMY CELRB (US)  
Cc: Bovee, David; Geldard, Jonathan  
Subject: RE: RG&E Permit LRB-2018-00799

Attached is the Project's NWP 12 authorization.



Thanks,

-Brian

From: Bury, Brian  
Sent: Monday, April 22, 2019 2:51 PM  
To: 'Adams, Heather L CIV USARMY CELRB (US)'  
Cc: Bovee, David; Geldard, Jonathan  
Subject: RG&E Permit LRB-2018-00799

Hello Heather,

RG&E is well within construction of the CM-1 & CM-4 Replacement Project. Our contractor is currently working on the 24" pipe Horizontal Directional Drill (HDD) of the CSX Railroad ROW and adjacent portions of NYSDEC CI-4 and has encountered consistent critical failures in their attempts.

To briefly summarize the situation, the geological stratification in the project right of way includes an approximately 15 foot top layer of soft, saturated soils over a layer of loose cobble and boulder. We have also identified a solid rock undulation approximately 1,000 feet long and centered between entry and exit of the HDD that was not observed in the geotechnical exploration performed for the proposed drill. The resulting 1,900 linear foot HDD profile has to traverse through all 3 geological layers on both the approach and exit from the bore tangent (bottom). In addition to the geological features, there is an artesian aquifer attributing positive water pressure into the bore hole. The added water volume and pressure is diluting the drilling mud, while removing silts and sand between the cobbles creating increasingly unstable conditions within the pilot hole. The combination of not being able to maintain stable mud pressure in the bore hole, and the unstable cobbles collapsing into the bore path has caused the HDD drill string to continually be pushed out of alignment. This condition compounds the rotational torque and linear drilling forces to exceed the strength capacity of the drill rod steel, causing complete failure (breaking) of the drill rods. To date, the contractor has made 3 attempts with the latest including full grouting of the drill profile in an effort to stabilize the cobble structures as well as utilizing thicker and stronger steel drill rods. All attempts have resulted in similar failures, with no improved success.

We have evaluated all options to ensure we can replace the existing pipeline in as expedient a manner as possible, while simultaneously protecting the environmental resources in the project area. There are no options to re-route as the existing ROW was granted through eminent domain and a new route to the east would further impact the conservation easement. West of the ROW is a wetland mitigation bank that does not provide a feasible alternative. At this time, we are proposing to open cut and install the pipeline along the attempted HDD path.

RG&E has developed a plan to install both the 24" and 16" steel pipelines entirely within the existing cleared 40-foot right of way via open trenching while still boring (via "guided HDD") the CSX railroad tracks. Impacts to USACE wetlands

are similar in quantity to the previous HDD plan, save for an additional 653 square feet (0.015 acres) of PFO previously proposed to be cut with stumps left in place will now need to have stumps removed for the open trench installation. See tables below for differences:

#### CM1/CM-4 Wetland Impacts – Former HDD Installation

Wetland

Class

Permanent Conversion USACE (acres)

Total Temporary Impacts (acres)

Permanent Loss

Sheets

WK

PFO

0.029

0.057

0.0

08

WL

PSS

0.923

0.0

08, 09

PEM

0.235

0.0

08, 09

WM

PFO

0.013

0.125

0.0

09, 10

PEM

0.435

0.0

10

Totals

0.042

1.775

CM1/CM-4 Wetland Impacts Proposed Open-trench Installation (With railroad HDD)

Wetland

Class

Permanent Conversion USACE (acres)

Total Temporary Impacts (acres)

Permanent Loss

Sheets

WK

PFO

0.029

0.057

0.0

08

WL

PSS

0.959

0.0

08, 09

PEM

0.235

0.0

08, 09

WM

PFO

0.028

0.125

0.0

09, 10

PEM

0.435

0.0

10

Totals

0.057

1.811

I wanted to present this information to you as I am not sure if the proposed change affects the Project's existing NWP 12 authorization. Please review and advise if further information is required. We have already discussed the proposed change with NYSDEC, as we needed to make sure they were on-board with the change before presenting any information to USACE. Please do not hesitate to contact me with any questions.

Thanks,

-Brian

Brian Bury PWS, CPESC

Manager – Environmental Programs/Projects PO Box 5224. Binghamton, NY 13902 Office 607-762-8835

Cell 607-644-5177

bbury@nyseg.com <mailto:bbury@nyseg.com>

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## **ATTACHMENT 4**

CSX Email Correspondence

## Geldard, Jonathan

---

**From:** Brewer, Lucas <lbrewer@BERGMANNPC.com>  
**Sent:** Thursday, February 14, 2019 10:10 AM  
**To:** Geldard, Jonathan; Muhire, Modeste; Krom, Eileen; Cooper, Michael  
**Cc:** Bovee, David (David\_Bovee@rge.com); P. E. Steve T. Lawlor (steven\_lawlor@rge.com); Sova, Josh  
**Subject:** RE: RG&E CM4-CM1 Pipeline Project: CSX Crossing Evaluation

Jonathan,

Thank you for providing the status update.

An alternative means and methods would be acceptable as long as it is in conformance with CSXT's standard requirements, and we reviewed and marked the new plans as "Conforms as Noted".

Modeste will be reviewing your project today, and you should have an email providing additional information in order to assist you with the process to make this modification to your plans.

Very Respectfully,

Lucas J. Brewer, PE, MBA | Project Manager  
716.710.3925 (work) | 585.307.1938 (cell)  
[lbrewer@bergmannpc.com](mailto:lbrewer@bergmannpc.com)

### BERGMANN

Architects | Engineers | Planners  
40 La Riviere Drive, Buffalo, NY 14202

---

**From:** Geldard, Jonathan <[JGeldard@LaBellaPC.com](mailto:JGeldard@LaBellaPC.com)>  
**Sent:** Thursday, February 14, 2019 9:30 AM  
**To:** Muhire, Modeste <[mmuhire@BERGMANNPC.com](mailto:mmuhire@BERGMANNPC.com)>; Krom, Eileen <[ekrom@bergmannpc.com](mailto:ekrom@bergmannpc.com)>; Brewer, Lucas <[lbrewer@BERGMANNPC.com](mailto:lbrewer@BERGMANNPC.com)>; Cooper, Michael <[ccooper@bergmannpc.com](mailto:ccooper@bergmannpc.com)>  
**Cc:** Bovee, David ([David\\_Bovee@rge.com](mailto:David_Bovee@rge.com)) <[David\\_Bovee@rge.com](mailto:David_Bovee@rge.com)>; P. E. Steve T. Lawlor ([steven\\_lawlor@rge.com](mailto:steven_lawlor@rge.com)) <[steven\\_lawlor@rge.com](mailto:steven_lawlor@rge.com)>; Sova, Josh <[jsova@LaBellaPC.com](mailto:jsova@LaBellaPC.com)>  
**Subject:** RG&E CM4-CM1 Pipeline Project: CSX Crossing Evaluation  
**Importance:** High

Modeste and Team,

The Rochester Gas & Electric CM4 and CM1 Project team has encountered consistent critical failures on the Horizontal Directional Drill to install the 24" steel pipeline under the CSX right of way.

To briefly summarize our situation, the geological stratification in the project right of way includes an approximately 15 foot top layer of soft wet soils over a layer of loose cobble and boulder. We have also discovered a solid rock undulation approximately 1,000 feet long and centered between entry and exit that was not observed in the geotechnical exploration performed on either end of the proposed drill. The resulting 1900 linear foot bore profile has to traverse through all 3 geological layers on both the approach and exit from the bore tangent. In addition to the geological layers, there is an artesian aquifer presenting positive water pressure into the bore hole diluting the mud while removing silts and sand between the cobbles creating increasingly unstable conditions. With no mud pressure able to be maintained



in the bore hole and the unstable cobbles, the HDD drill string is continually kicked out of alignment compounding the rotational torque and linear drilling forces to exceed the strength capacity of the drill rod steel causing complete failure of the Rods. To date, our project team has made 3 bore attempts with the last including grouting of the drill profile in an effort to stabilize the cobble structures. All have failed with no success. Ongoing estimates to complete the bore will require extraordinary efforts and a timeline of approximately 3 to 7 months of continued HDD operations.

As such, we are evaluating all options to ensure we can replace the existing pipeline in critical condition in as expedient a manner as possible. The Horizontal Directional Drill installation method was initially chosen in the design process to reduce impact to both CSX and the wetland feature in the proximate area. However, at this time, the option to Open Cut and install the pipeline through traditional methods is being explored by the Project team with appropriate stakeholders.

We would like to install both the proposed 24" and 16" steel pipelines via trenching methods up to the CSX crossing where we propose to install via more conventional boring methods (e.g. auger boring, thrust boring, etc.) underneath the tracks consistent with CSX standards. We would maintain the original alignment as indicated in our permit drawings, but revise the pipe elevation to approximately 516', approximately 34 feet below the railroad tracks. Due to the water in this area, our bore pits would be delineated by sheet piling to maintain stability and help in dewatering efforts of the drill pits.

We have a desire to utilize the winter months with the grounds are frozen and complete the work under the CSX ROW prior to the spring thaw if we are able to obtain the proper approvals in time.

Can you and your team please help us to identify what Bergmann would need from our Project Team in order to evaluate such change as expeditiously as possible? With your input, we would design our approach accordingly and provide the appropriate details for review. We are available for a conference call anytime today if that can be arranged with your team's availability.

Thank you in advance for your time and consideration on this discussion.

**Jonathan T. Geldard, PMP**  
LaBella Associates | Project Manager

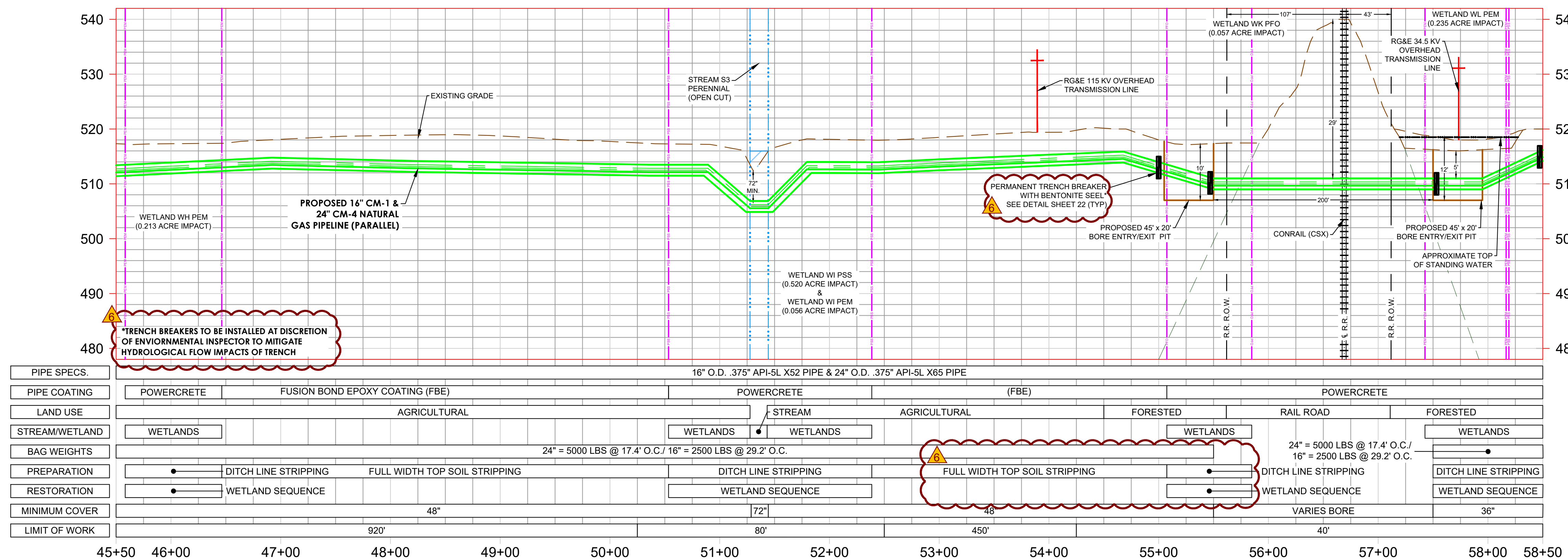
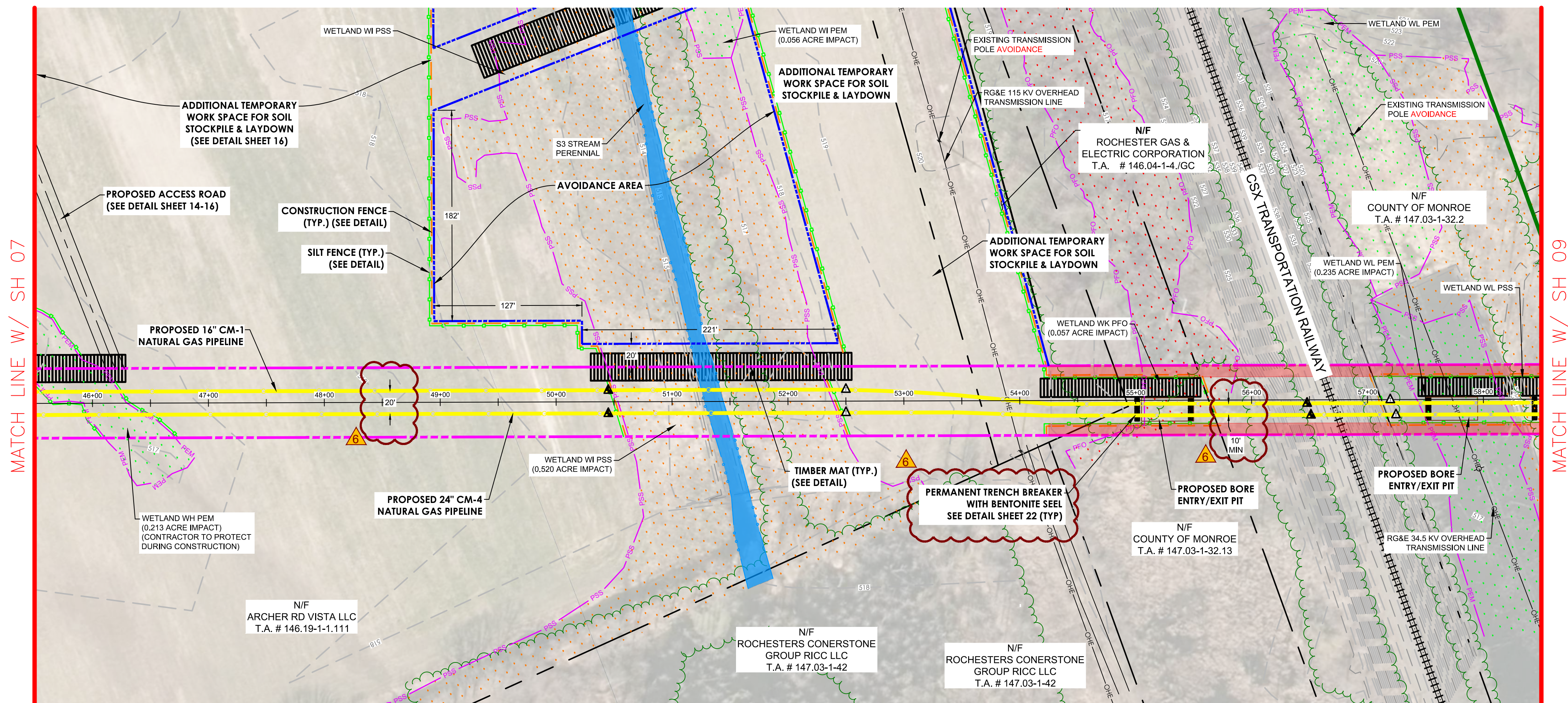
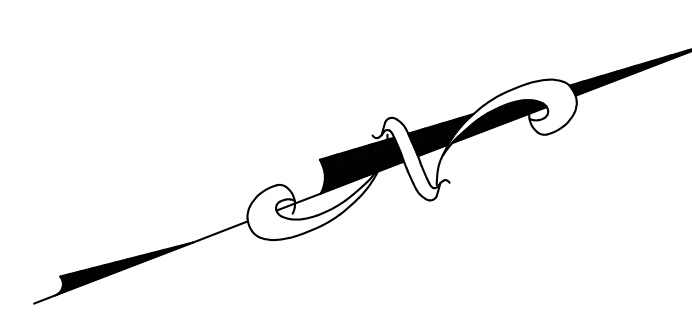
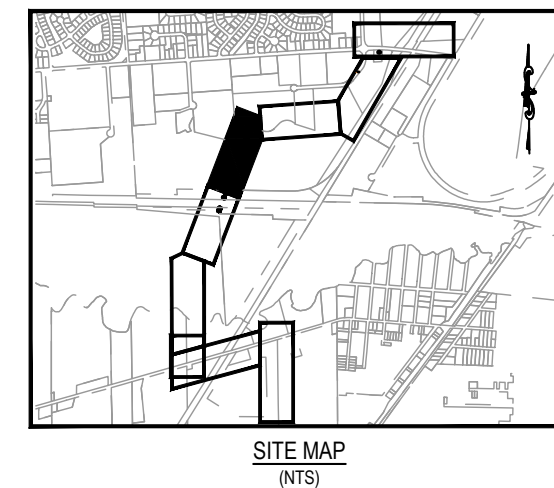


585-469-2361 cell  
Rochester Gas & Electric Client Office  
1300 Scottsville Road, Rochester, NY 14624  
[labellapc.com](http://labellapc.com)

## **ATTACHMENT 5**

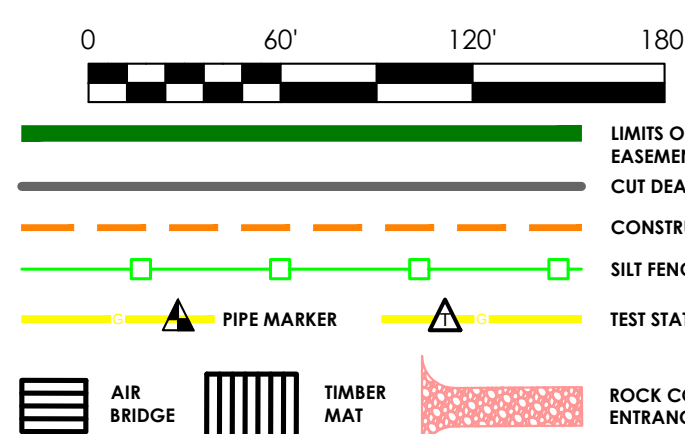
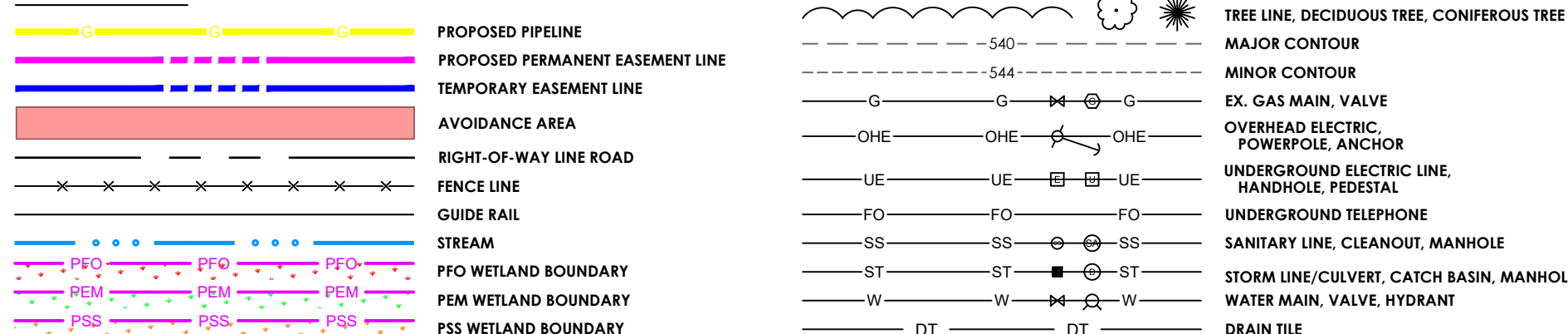
Revised Design Drawings





▲ REVISED ALIGNMENT & PROFILE FROM STA. 53+00 TO 72+00 TO REPLACE HORIZONTAL DIRECTIONAL DRILL WITH CONVENTIONAL BORE UNDER CSX RAILROAD, CONVENTIONAL BORE UNDER GATES CHILI SANITARY SEWER AND OPEN CUT THROUGH WETLANDS WK & WL.

# LEGEND



OWNER ENGINEER:  
**RG&E**  
DRAWING PREPARED BY:  
**THE DDS COMPANIES**  
45 HENDRIX ROAD  
WEST HENRIETTA, NY 14586  
PHONE: (585) 340-7540  
FAX: (585) 340-7541

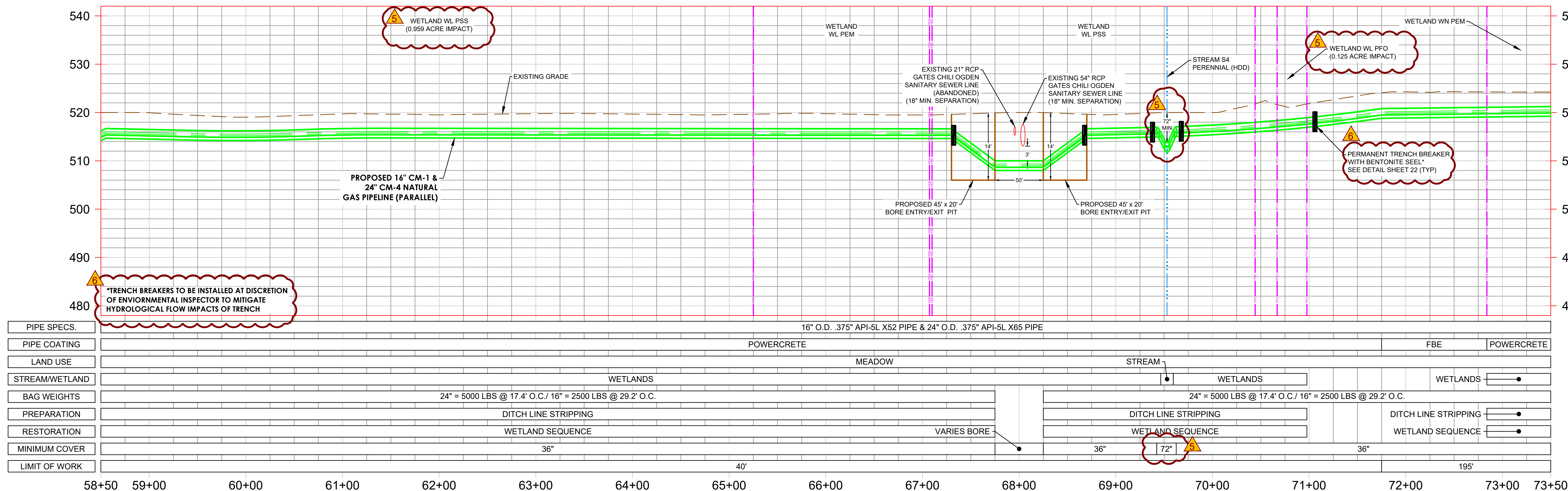
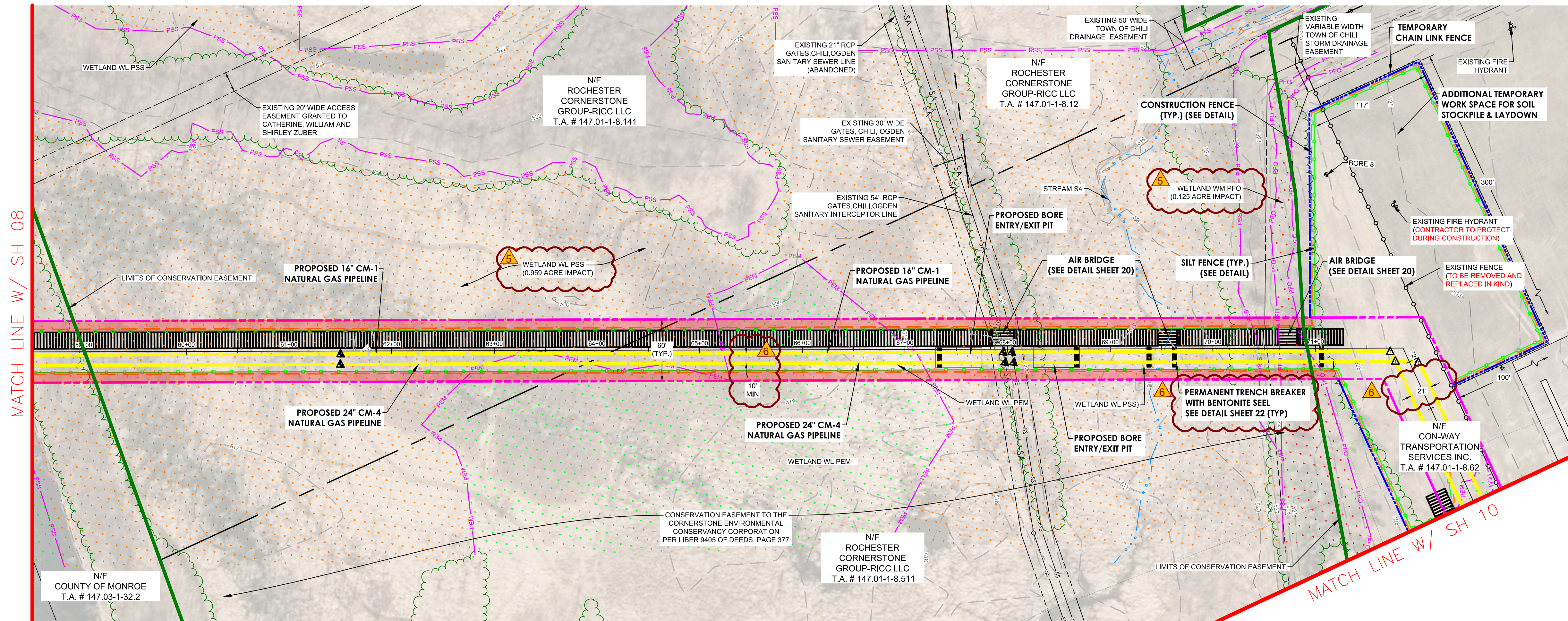
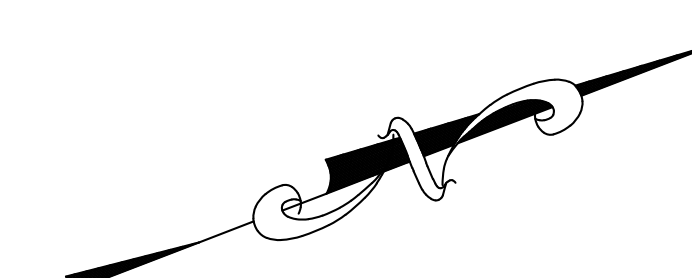
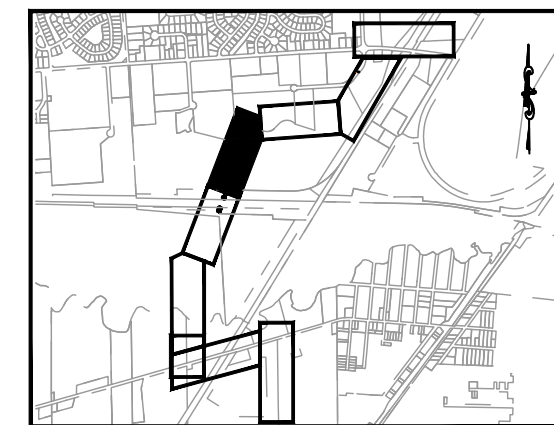
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ACCEPTED BY OE:

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▲ 04/02/2019	A.C.V.		REVISED CSX RR BORE AS SENT TO USACE - SHEETS 8 & 9	M.E.P.
▲ 04/17/2019	A.C.V.		REVISED CSX RR BORE IFC - SHEETS 8,9,10	M.E.P.
▲ 05/03/2019	A.C.V.		REVISED BANDING, ADDED TRENCH BREAKS, PIPE SPACING DIM.	M.E.P.
▲ 05/09/2019	D.R.G.		REVISED CM-1 ALIGNMENT FROM STA. A104+00 TO STA. A106+00	M.E.P.

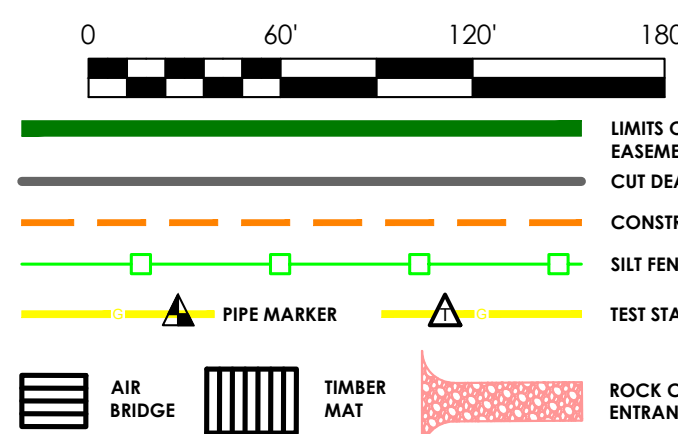
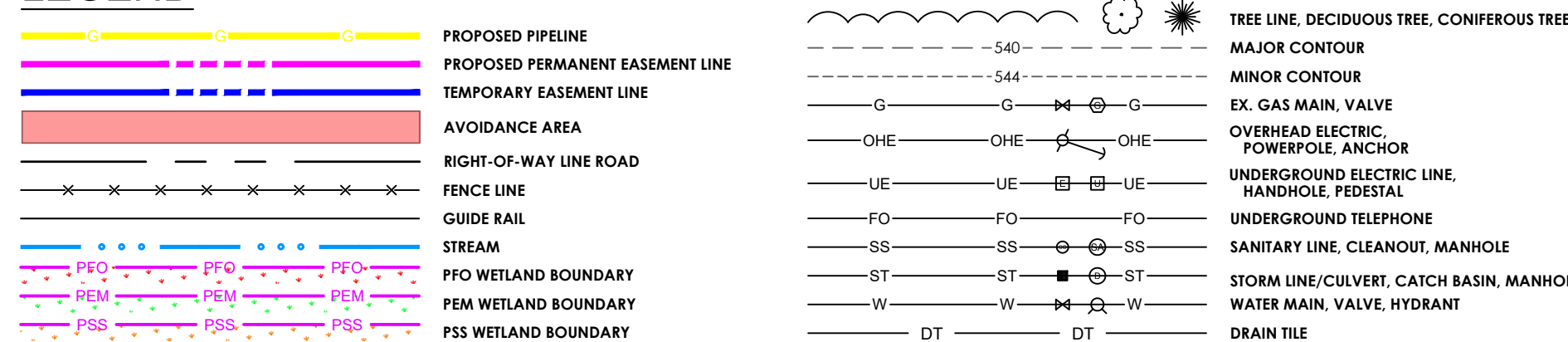
CM-1 & CM-4 REPLACEMENT PROJECT				
TOWN OF CHILI, MONROE COUNTY, NEW YORK				
CM1 & CM4 ALIGNMENT				
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CK:	D.G.	S:\job\Energy East\2017 Projects\17-E033\DWG\		
APP:	M.P.	PAGE:		
SCALE:	1" = 60'	SH 08		
DATE:	5/09/19	REV:		
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REVISOR'S NOTE: REVISED ALIGNMENT & PROFILE FROM STA. 53+00 TO 72+00 TO REPLACE HORIZONTAL DIRECTIONAL DRILL WITH CONVENTIONAL BORE UNDER CSX RAILROAD, CONVENTIONAL BORE UNDER GATES CHILI SANITARY SEWER AND OPEN CUT THROUGH WETLANDS WK & WL.

LEGEND



OWNER ENGINEER:  
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PHONE: (585) 340-7540  
FAX: (585) 340-7541

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05/09/2019	D.R.G.		REVISED CM-1 ALIGNMENT FROM STA. A104+00 TO STA. A106+00	M.E.P.

CM-1 & CM-4 REPLACEMENT PROJECT TOWN OF CHILI, MONROE COUNTY, NEW YORK				
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CK:	D.G.			
APP:	M.P.	FILE:	S:\job\Energy East\2017 Projects\17-E033\DWG\	
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