

December 12, 2025

**VIA DMM**

Hon. Michelle L. Phillips, Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

RE: Case 25-E-0646 — LFS John Street LLC’s Petition for Declaratory Ruling  
RG&E’s Surreply to LFS’s Response to RG&E’s Opposition dated December 8, 2025

Dear Secretary Phillips:

On behalf of Rochester Gas and Electric Corp. (“RG&E”), I respectfully submit this letter as a surreply to LFS John Street LLC’s (“LFS”) *Response to RG&E’s Opposition* dated December 8, 2025 (“LFS’s Reply” or “Reply”) and in further opposition to LFS’s petition seeking a declaratory ruling pursuant to 16 NYCRR § 8.1 *et seq.*<sup>1</sup>

To RG&E’s knowledge, LFS filed its Reply without seeking or obtaining leave of the Secretary to do so. The Public Service Commission’s (“the Commission”) rules governing declaratory rulings (16 NYCRR § 8.1 *et seq.*) do not contemplate a right of reply and any further submissions beyond the petition and opposition require authorization by the Secretary. LFS attempts to justify its Reply by claiming a need to “identify and correct material inaccuracies” in RG&E’s Opposition, a justification that falls flat because the Reply fails to cite a single factual inaccuracy made by RG&E.

Instead, the Reply raises several new (but still inaccurate) allegations and legal theories that were not part of LFS’s initial filing. LFS’s rationale for declaratory relief is a moving target lacking a viable legal theory that would entitle it to relief.<sup>2</sup> The new allegations in LFS’s Reply are equally meritless as those in its initial filing and further reinforce that the Petition should be denied and dismissed with prejudice for failure to state a claim against RG&E under any statute, regulation or

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<sup>1</sup> For the first time, LFS’s Reply acknowledges that its objective in bringing this declaratory ruling action is to return to civil court to recommence its action against RG&E and its customers for **\$30 million** in speculative lost profits (the “Lawsuit”). Notably, LFS provides no explanation for why it did not disclose the Lawsuit to the Commission in its initial filing. See RG&E’s Opposition, p. 1.

<sup>2</sup> Specifically, the meritless allegations in LFS’s Reply regarding the *Proactive Planning Proceeding*, RG&E’s alleged (and nonexistent) “moratorium,” and the transmission tap solution proposed by RG&E in connection with the MWI project were not raised in LFS’s initial filing. In addition, LFS’s discussion of RPI Print relies on a hearsay affidavit that fails to attach a copy of the very e-mail communication that purportedly demonstrates LFS’s strained point.

Commission Order. Specifically, the following facts – which LFS has not and cannot dispute – justify the complete dismissal of LFS’s claims:

- Contrary to the allegations at the core of LFS’s petition and its Lawsuit, the documentary record – specifically the 2018 Will Serve Letter and so-called Infrastructure Plan – confirm that RG&E expressly disclaimed that it would or could indefinitely reserve capacity at the Wiregrass Business Park (the “Development”) for LFS’s unknown and unidentified hypothetical future tenants.<sup>3</sup>
- LFS incorrectly asserts “there is no firm electricity available in the near future in a significant portion of Henrietta, New York” and that “RG&E imposed a moratorium on new firm electric service.” No such moratorium exists or was ever imposed. The Wiregrass Development would have received service—and still could today—but LFS declined to pay contribution in aid of construction (“CIAC”), which LFS apparently viewed as an imprudent investment in the absence of committed tenants. LFS chose not to challenge the CIAC assessment because it was reasonable, prudent, and consistent with RG&E’s tariff for *Unusual Conditions and Increased Loads*. In its Reply, LFS argues for the first time that the CIAC assessment went beyond the scope of RG&E’s tariff, but LFS has not put *any* facts into the record on which the Commission could evaluate such a claim.
- Every application or request for service at the Development has reflected LFS’s sole interest in non-interruptible service. LFS now argues that RG&E breached a duty to disclose the availability of interruptible service, however, no such duty exists. The record confirms RG&E presented LFS the interruptible service option in December 2024, at the latest, approximately the exact same timeframe as other developers in Henrietta (*i.e.*, in 2024). Thus, RG&E violated no duty or obligation to LFS, and LFS suffered no damages from this alleged delayed disclosure of the interruptible service option.<sup>4</sup> Indeed, belying LFS’s allegations is that LFS has known about the interruptible service option for at least a year and has never pursued it.

For these reasons, and those outlined below, the Commission should deny LFS’s petition for declaratory ruling and dismiss LFS’s claims for failure to state a claim against RG&E.

**1. LFS Has Not Met the Legal Standard or Demonstrated any Entitlement to a Declaratory Ruling in its Favor.**

LFS’s Reply does nothing to alter the fact that a declaratory ruling is not the appropriate vehicle for deciding a factually complex and contested dispute as exists here. Declaratory ruling

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<sup>3</sup> See RG&E’s Opposition, pp. 4-7.

<sup>4</sup> *Id.* at pp. 13-14, 22.

proceedings are not intended to serve as fact-finding exercises.<sup>5</sup> This is particularly true where, as here, LFS seeks declaratory relief based on a demonstrably inaccurate presentation of the facts and applicable legal standards.

Contrary to LFS's Reply, its request for relief meets none of the criteria set forth in 16 NYCRR § 8.1(a) nor does LFS's pursuit of its \$30 million claim for speculative lost profits against RG&E and its customers serve the "public interest."<sup>6</sup>

## **2. LFS Misrepresents the Commission's Order from the *Proactive Planning Proceeding*.**

After failing to disclose or discuss the existence or implications of the Commission's *Proactive Planning Proceeding* (Case 24-E-0364) in its initial filing, LFS's Reply misrepresents and selectively quotes from the Commission's Order in a misguided attempt to attach blame on RG&E for alleged "inadequate planning" as the need for the Station 255 Project. Following LFS's logic, any project that did not receive requested funding in the Commission's *Urgent Upgrades Order* could be cited by a developer as a basis to claim damages that the utility engaged in "inadequate planning." This is plainly absurd. LFS's self-serving interpretation finds no support in the language of the Commission's *Urgent Upgrades Order*.

In reality, nothing in the *Urgent Upgrades Order* dated June 12, 2025 supports LFS's blatant misrepresentation of the Commission's decision not to fund the Station 255 Project. Indeed, the plain text of the Order clearly explains the Station 255 Project would not receive funding because it "is expected to address contingency operation on the system as opposed to . . . urgent electrification needs . . . ." The Commission also based its decision on the fact that the Project had received a State grant that would serve as a bridge to fund initial work while RG&E's next rate case was pending. According to the Order, the presence of grant funding "suggest[s] that the project is not urgent and has already received consideration outside of the Proactive Planning Framework."<sup>7</sup>

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<sup>5</sup> RG&E Opposition at 14; Thome v. Alexander & Louisa Calder Found., 70 A.D.3d 88, 99-100 (1st Dept 2009) ("While fact issues certainly may be addressed and resolved in the context of a declaratory judgment action, the point and the purpose of the relief is to declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact.")

<sup>6</sup> Among other things, LFS's Reply doubles down on its improper request for the Commission to direct RG&E to "implement any required electrical grid upgrades" and "undertake a public relations campaign" promoting the Development. The Commission has consistently held that these forms of relief are unavailable in a declaratory ruling proceeding, denying petitions that seek to direct a respondent to take specified action or that do not request a determination within § 8.1(a)'s narrow categories. See RG&E's Opposition at pp. 15-16; Case 17-M-0244, *Petition of Utilisave, LLC for a Declaratory Ruling Concerning an Order Directing Consol. Edison to Adopt & Utilize the Alternative Proposed Methodology of Utilisave, Order Denying Petition for Declaratory Ruling* (Dec. 14, 2018) at p. 9 ("Declaratory rulings by the Commission are not orders containing directives, but are findings related to the applicability of rule or statute enforceable by the Commission or the validity of such a rule . . .").

<sup>7</sup> Case 24-E-0364, Proactive Planning Proceeding, Order Addressing Urgent Upgrade Filings (June 12, 2025) at pp. 81-82.

In its Order establishing the Proactive Planning Proceeding, the Commission observed that “incremental upgrades” from “individual load letters”—i.e., the type of upgrades that LFS sought—“may result in inefficient expansion within a given service territory, where recently upgraded areas may require new capacity in short order.”<sup>8</sup> The Commission therefore directed utilities to analyze “how costs for such projects would be recovered, allocated, and how to mitigate ratepayer risk of stranded assets[.]”<sup>9</sup> Ensuring that a developer covers CIAC for the extension of a transmission tap that is constructed for the sole purpose of serving that singular customer/development is entirely consistent with the Commission’s long-standing policy and the express focus of the Proactive Planning Proceeding.

LFS’s Reply omits all of these details and mischaracterizes the *Urgent Upgrades Order*. LFS also ignores that RG&E has advanced multiple initiatives to address capacity, including the ESDC-supported Station 255 project and the Station 416 load relief project, each on defined schedules to add area capacity,<sup>10</sup> thereby undermining LFS’s claim of inaction. Other than its misrepresentations about the Commission’s order, LFS has provided no evidence to support that the need for the Station 255 Project was caused by RG&E’s alleged “inadequate planning.” LFS’s delayed and unsupported claim provides no basis for the relief that LFS seeks.

### **3. LFS’s Assertion that RG&E Declared a “Moratorium” is False and its Related Legal Arguments Are Without Merit.**

LFS’s Reply asserts (for the first time) a blatant falsehood that RG&E declared a “moratorium” on electric connections in Henrietta. In reality, no “moratorium” on electric connections was ever declared or in place in Henrietta. Even with the announced capacity constraints, new customers could add load to the system if they contributed to upgrades necessitated by their developments, consistent with RG&E’s tariff as well as the Commission’s direction that utilities should consider “how costs for [individual load letters] would be recovered, allocated, and how to mitigate ratepayer risk of stranded assets[.]”<sup>11</sup> Contrary to LFS’s Reply, the Capacity Summit Presentation dated December 2023, attached here, offers no support to the claim that RG&E declared a moratorium.<sup>12</sup>

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<sup>8</sup> *Id.*, *Order Establishing Proactive Planning* (Aug. 15, 2024) (“Proactive Planning Proceeding Order”) at p. 5.

<sup>9</sup> *Id.* at p. 9.

<sup>10</sup> RG&E Opposition, p. 12.

<sup>11</sup> PSC No. 19 (“RG&E Tariff”), Leaf 56(3)(I) *et seq.*, *Unusual Conditions and Increased Loads* (“[W]here unusual expenditures are necessary to supply service because of the location, size, or character of the applicant’s or customer’s installation, facilities shall be constructed only when applicant or customer makes an adequate contribution toward the cost of such facilities, or guarantees continued payment of bills for electric service, or makes other satisfactory arrangements which would be sufficient to warrant the Company to undertake the investment and expense involved.”); *see also* Proactive Planning Proceeding Order at p. 9.

<sup>12</sup> *See* Henrietta Capacity Discussion slide deck, enclosed with project specific information redacted. (“Th[e] [Henrietta] area is capacity limited, and in most cases, larger substation-type upgrades will be needed to enable additional load interconnections.”). There is no discussion in the presentation of imposing a moratorium anywhere in the slide deck.

Based on the false premise that RG&E declared a “moratorium,” LFS asserts that a “heightened obligation to communicate service alternatives” exists under the Commission’s gas planning moratorium rules and that this should be enforced against RG&E for its alleged failure to present LFS with the option to take interruptible service.<sup>13</sup> For multiple reasons, it is obvious that the Commission’s *Gas Planning Moratorium Order* has no application to this matter: (i) RG&E did not institute a moratorium in Henrietta, and (ii) the Commission’s *Gas Planning Moratorium Order* does not govern this dispute which pertains solely to electric utility service.

Furthermore, as discussed in the introduction and RG&E’s Opposition, the record confirms that RG&E did not breach any duty or rule by offering LFS the option to take interruptible service in December 2024.<sup>14</sup> This disclosure occurred in a similar timeframe as other Henrietta developers and LFS has never expressed interest or pursued interruptible service since that time.

#### **4. LFS’s Reply Misrepresents the “Transmission Tap” Option and Relies on Inadmissible Hearsay Evidence with Respect to RPI Print.**

(i) Transmission Tap Option – After omitting the Transmission Tap Option and its related failed lease negotiations with MWI, Inc. from in its initial filings,<sup>15</sup> LFS’s Reply now claims (for the first time) that RG&E’s request for a CIAC to fund this solution violated 16 NYCRR § 98.2. LFS’s interpretation is wrong and is based on selectively quoted language. In reality, 98.2(b)(2), entitled *Obligations of All Applicants*, states as follows:

Before service may be rendered to any applicant, such applicant shall first have . . . paid or agreed in writing to pay the utility the material and installation costs relating to any portion of distribution line, service line and appurtenant facilities . . . that exceeds the portion which the utility is required to provide without contribution, which costs shall be defined in the utility's tariff.

LFS claims that the “transmission tap” option constitutes a “transmission upgrade” and is therefore outside the scope of the above provision, but LFS fails to put any facts into the record regarding the particulars of the transmission tap. Indeed, LFS superficially presumes from the name alone that the so-called “transmission tap” constitutes “transmission upgrades,” but this is not the case. That \$1 million dedicated transmission tap line would have extended an existing transmission tap for the sole purpose of serving the Development. That tap extension was not an “upgrade” to RG&E’s transmission facilities and would have provided no benefit whatsoever to any other

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<sup>13</sup> LFS’s Reply, p. 3, FN 5. It is worth mentioning that the term “heightened obligation” appears nowhere in the Gas Moratorium Order and that there is no indication in that Order that an LDC’s failure to timely offer “alternatives” would then give rise to customer’s private right of action. See Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, Order Adopting Moratorium Mgmt Procedures (May 12, 2022) at 31.

<sup>14</sup> See RG&E’s Opposition, pp. 21-23.

<sup>15</sup> Id. at 9-10.

customer.<sup>16</sup> Requiring a CIAC for this type of developer-required work is (1) consistent with the Commission's guidance about investments that benefit only a singular customer, and (2) clearly authorized by RG&E's tariff, specifically the *Unusual Conditions and Increased Loads* provision,<sup>17</sup> which LFS's Reply does not contest.

(ii) RPI Print – LFS's Reply contends without evidence that the capacity shortage in Henrietta was the “determinative” factor in RPI Print's decision not to occupy space at the Development. In support, LFS encloses a statement from real estate broker Stephen Moore who claims that a colleague working on the LFS account received an e-mail from an unnamed RPI Print representative in November 2023 that referred to RG&E's capacity shortage as “bombshell news.” This supposed e-mail is not enclosed with the statement or LFS's Reply.

Neither Mr. Moore's sworn statement nor this missing alleged “bombshell” e-mail from RPI Print qualify as admissible or probative of issues relevant to this case. The alleged e-mail itself says nothing about RPI Print's ultimate decision not to occupy space at the Development. Even if it had, LFS's alleged loss of a tenant is not probative of whether RG&E committed a breach or violated any statute, Commission rule or order.

For the above reasons, the Commission should deny LFS's petition for a declaratory ruling and dismiss LFS's allegations as they fail to state any claim against RG&E breach or violation of a statute, Commission rule or order. We appreciate your office's courtesies.

Respectfully submitted,

By:



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Enc.

Henrietta Capacity Discussion slide deck (12/7/23)

cc (via e-mail):

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<sup>16</sup> *Id.* at pp. 18-20.

<sup>17</sup> RG&E Tariff, Leaf 56(3)(I) *et seq.*

# **EXHIBIT A**

# Henrietta Capacity Discussion

12/07/23



# A Brief History



**RG&E has been serving the Greater Rochester region for 175 years. Founded with the intent of providing electric service to the area, the mission has changed to providing safe, reliable, and resilient power to the region.**

## **Lowest Rates**

NYSEG & RG&E have the lowest utility rates in New York State. This is a phenomenal benefit to our rate payers. This requires our organizations to be run lean and efficiently focusing on system reliability as the goal for all stakeholders.

## **CLCPA**

Meeting these goals are a considerable part of the Companies capital budget. It should be noted that CLCPA Phase 1 and 2 are transmission-only investments and distribution investments needed to support NY State goals have not yet been identified.

## **Timeline**

Supply chain issues faced by the entire industry have severely impacted the timelines associated with upgrades.

We have been successful at leveraging the power of AVANGRID to overcome supply chain issues

## **Acceleration of Activity**

Finger Lakes region has 1,097 active or completed projects funded through the Regional Economic Development. This is the highest volume in the State of NY.

The project inflow is higher than any time in history and this is consistent with what is being seen nation-wide.

Projects are expanding in size and scope, the inquiries received for projects require significant energy requirements in comparison with history.

## Town of Henrietta – Overview

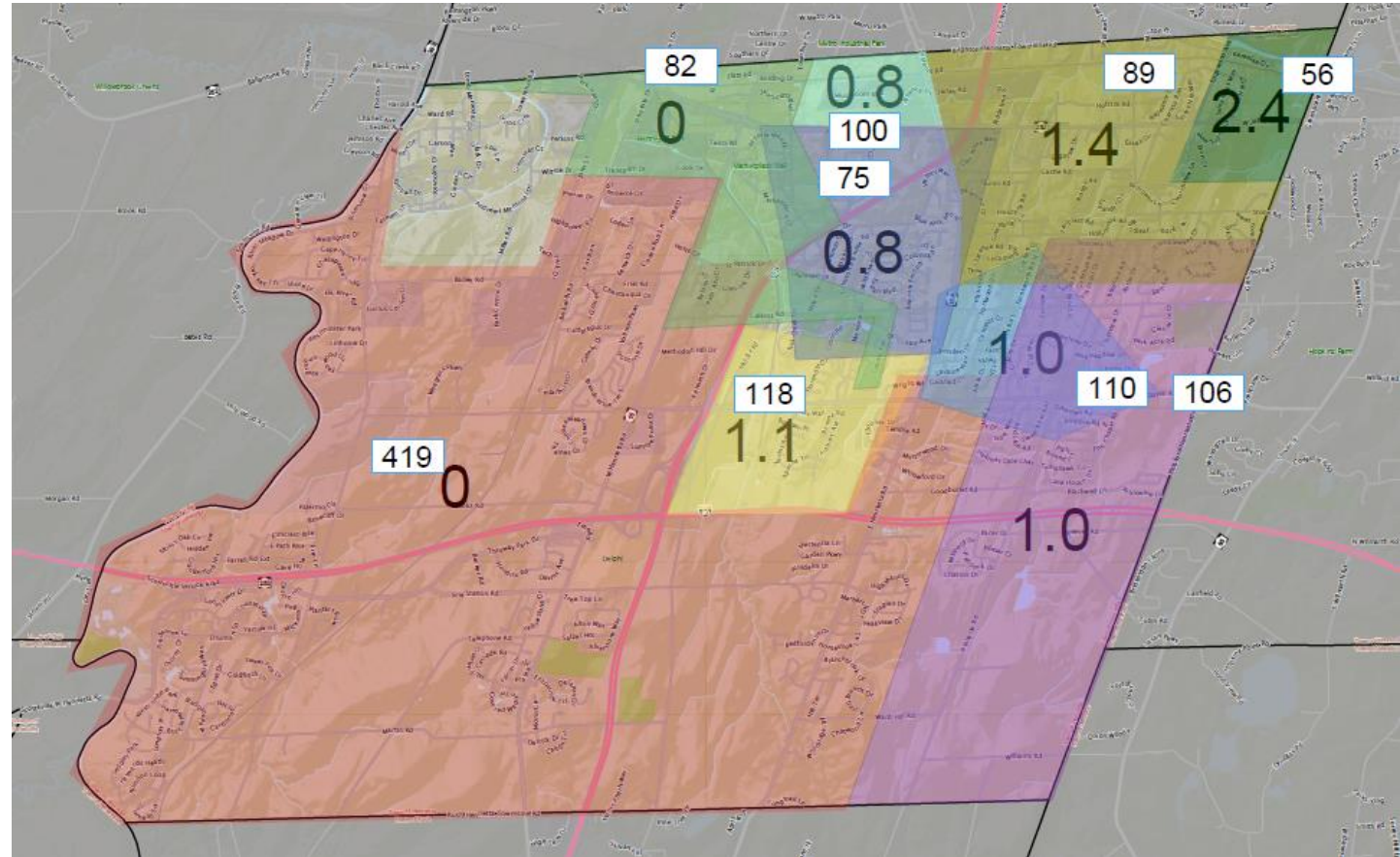
RG&E is acutely aware of the capacity constraints in the Town of Henrietta. This is not a Henrietta specific issue; the same issue is being seen statewide for all Utilities (not just electric/gas) as organizations expand and locate in NYS and the path towards electrification continues.

### Notes and Legend:

- **Station 56, 82, and 106 are not located within the Town of Henrietta, but they have circuits that provide load to Henrietta Customers.**
- **The values depicted within the diagram represent the available capacity at each station in consideration of existing Transmission and Distribution constraints.**
- **Values are in MVA**

### Key Takeaways:

- 1) This area is capacity limited, and in most cases, larger substation-type upgrades will be needed to enable additional load interconnections.**
- 2) Legacy project plans, and conceptual projects within this area, have been put on hold / or deferred due to lack of capital funding in prior / existing rate cases.**



**Figure: Town Of Henrietta Capacity Map**

# Capacity Constrained Substations



**RG&E must prioritize first alleviating capacity constraints where we have substations at or over capacity. System reliability is the number one priority for all stakeholders.**

**RG&E are consistently reviewing plans to address system wide issues.**

- Each potential project progresses through the same life cycle beginning with the initial idea and ending with the project closeout.
- For each potential project, a comprehensive assessment is completed to ensure that any proposed solutions address all needs.
- The needs that are assessed vary, but typically focus on asset condition, operation limitations, customer interruptions, and system reliability.

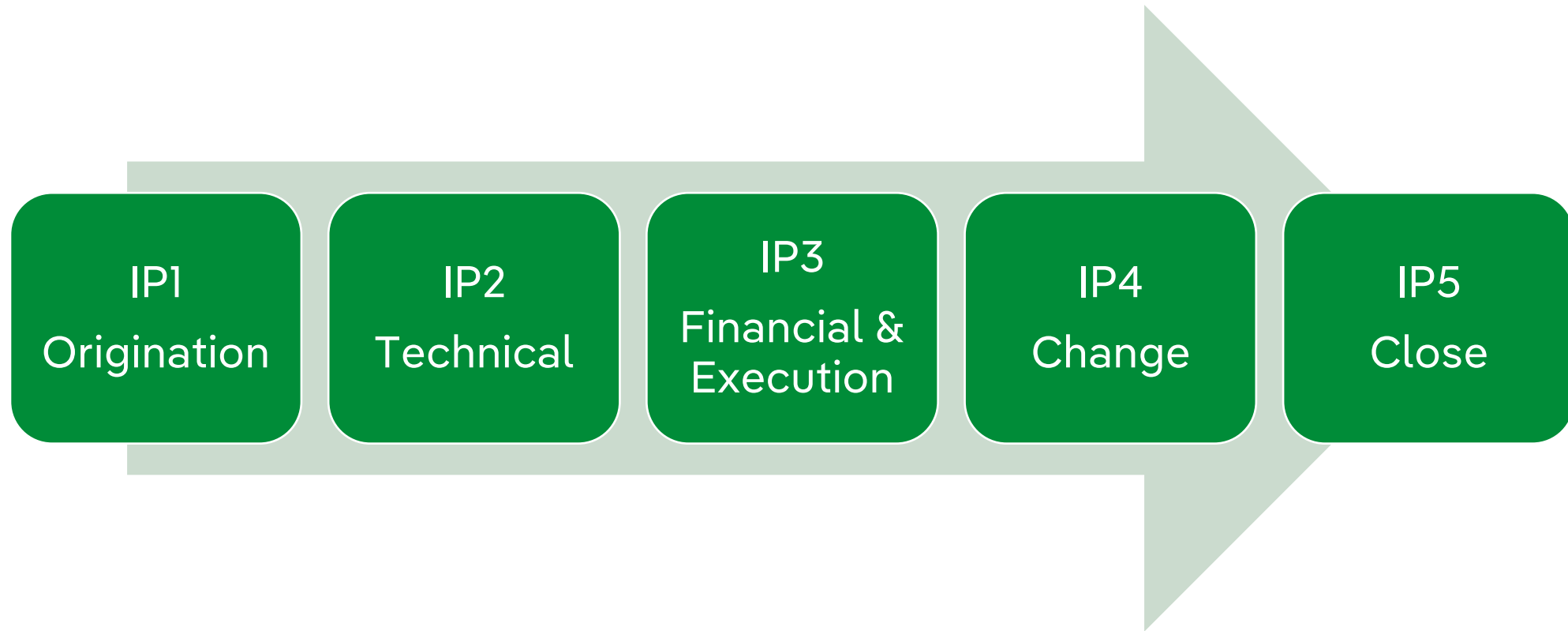
## **Distribution Load Relief Program**

- Company-wide effort to develop a mitigation strategy for the substations in NY that exceed 90% capacity.
- As part of the settlement negotiations, the agreed upon Joint Proposal for the rate case only provided 1/3<sup>rd</sup> of the necessary funding to mitigate transformers already at or above their nameplate rating.

# Investment Planning Process



Each potential project progresses through the same life cycle beginning with the initial idea and ending with the project closeout.





Capacity constraints / issues are also identified by Distribution Planning during Comprehensive Area Studies (CAS) and Transmission Planning during Local Area Study (LAS). Studies are performed to model the existing (near-term) and ten-year (long-term) future state of the distribution and transmission system (based on existing and future projected system parameters) with the purpose of identifying areas of concern and the reinforcements necessary as part of the ongoing Capital Investment Plan.

The objectives of the CAS and LAS Report are to:

- Identify and select the most appropriate circuits for review and study.
- Produce a working model of the selected distribution substations/circuits for the existing circuit parameters today, and for the future circuit parameters ten years from today.
- Analyze the model and identify existing and future issues at the substation and circuit level.
- As part of the CAS/LA Report:
  - (1) Recommend the reinforcements necessary to alleviate the existing and future issues at the substation and circuit level, as well as ameliorate the quality of safe, reliable, and resilient electric service for affected customers in the area.
  - (2) Correlate each recommended reinforcement with a preliminary, high-level cost estimate.



## Customer Contribution

RG&E's tariff [RG&E – PSC 19, Leaf No. 56, 3.I.(1)] requires that the cost of upgrades for large load interconnections be borne by the customer. RG&E must treat all customers fairly and equitably and therefore cannot deviate from the tariff.

## Contract In Aid of Construction (CIAC) Committee

A group established to develop a comprehensive policy on funding for system upgrades associated with customer load interconnects in support of electrification.

The main goal is to acquire load interconnection data to build a robust justification and investment plan to better position RG&E to accommodate future load interconnection in areas that require major upgrades.

# Henrietta Capacity 255 Solution ([REDACTED])

**The Station 255 solution would resolve the current capacity concerns at Station 419 (Area 0).**

**Additionally, this solution has the potential to unlock ~35MVA (24 MVA in Phase I) of capacity by the addition of a new 50 MVA transformer at Substation 255. The expected timeline is 3-4 years for a project such as this to be put into service.**

## STA 255 ([REDACTED])

- One new bay (one position) 115 kV AIS BAAH Expansion
  - Two 115 kV circuit breakers
  - 5 115 kV disconnect switches
  - 5" aluminum bus, fittings, and insulators
- One 115/12.47 kV 50 MVA transformer and oil containment system
- One 12.47 kV GIS lineup and enclosure
- Two distribution line takeoff structures
- Structures, equipment stands and foundations

## Distribution Circuit ([REDACTED])

- 1 mile of 3-phase 12.47 kV overhead distribution work from Station 255 to the East River Road.
  - Wood poles at approx. 170' spacing
  - 477 alum. conductor
- 2 New Circuits created from splitting Existing Circuit 5243.
- Total load transfer is approximately 17 MVA

# How Can We Partner?



## Advocacy

Build support for investments in grid capacity, site planning and site development.

Provide education on the role adequate grid capacity plays in economic development.

Promotion of the inclusion of capacity improvements when applying for grants such as ESD FAST NY Grant to Developers.

While RG&E cannot make speculative investments, Developers have the flexibility to do so.

Joint application to New York State to fund Station 255 upgrade which would help to solve capacity constraints in Henrietta, NY.

## Rate Case

Become a party to RG&E's next rate case.

Push for Capital Investments to build excess grid capacity for business attraction/expansion.

## Site List

Provide RG&E with a list of top available sites and anticipated load requirements. RG&E can evaluate and develop a timeline/cost estimate. This will be helpful with future investment planning as well.

**What are your thoughts on ways to work together to grow the Greater Rochester region?**





Across the Economic Development landscape in the Greater Rochester region and beyond there is a challenge facing utility providers (Power, Gas, Water, etc). That issue revolves around capacity. Below are some examples

[Redacted]

[Redacted]

[Redacted]