

**Rochester Gas and Electric Corporation**  
**Rochester Area Reliability Project**

**Exhibit 7**

**Local Ordinances**



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## **EXHIBIT 7: LOCAL ORDINANCES**

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This Exhibit addresses the requirements of 16 NYCRR §86.8.

### **7.1 Introduction**

The Rochester Area Reliability Project (“Project”) is proposed to be sited in the following jurisdictions:

County of Monroe

Town of Chili

Town of Gates

Town of Henrietta

City of Rochester

(each, a “Locality”).

This exhibit identifies, for each Locality, every substantive local legal provision (ordinance, law, regulation, standard, and requirement) potentially applicable to the Project. It specifies every such local legal provision that Rochester Gas and Electric Corporation (“RG&E” or “the Applicant”) requests that the Commission not apply because, as applied to the Project, such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers. Except for those provisions the Applicant specifically requests that the Commission not apply, the Applicant will comply with, and the location of the Project as proposed conforms to, all substantive local legal provisions that are applicable to the Project.

Due to the preemptive effect of PSL Section 130, all procedural requirements to obtain any approval, consent, permit, certificate, or other condition for the construction or operation of the Project do not apply.<sup>1</sup>

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<sup>1</sup> The Project’s Environmental Management and Construction Plan and associated erosion control measures will fulfill the NYSDEC’s erosion and sediment control requirements under the SPDES permit in accordance with New York State Environmental Conservation Law Article 17. As discussed in Exhibits 4 and 8 to this Application, it is Applicant’s understanding that because the Project is an Article VII facility, a separate Stormwater Pollution Prevention Plan will not be required.

### 7.1.1 Compliance Summary

The Compliance Summary set forth below lists every substantive local legal provision potentially applicable to the Project. It specifies every such local legal provision that the Applicant requests that the Commission not apply, in whole or in part. Tables 7-1 through 7-4 at the end of this exhibit provide summaries of all waiver requests including justification and statutory basis for each request.

		Compliance Summary
<b>County of Monroe</b>	Chapter 347 - Solid Waste	Will Comply
	Chapter 569 - Sanitary Code	Will Comply
<b>Town of Chili</b>	Chapter 210 - Construction Codes, Uniform	Will Comply
	Chapter 223 - Design Criteria and Construction Specifications Manual	Requests Partial PSC Refusal to Apply
	Chapter 234 - Dumps and Dumping	Will Comply
	Chapter 277 - Flood Damage Prevention	Requests Partial PSC Refusal to Apply
	Chapter 283 - Freshwater Wetlands	Will Comply
	Chapter 352 - Noise	Will Comply
	Chapter 425 - Solid Waste	Will Comply
	Chapter 433 - Stormwater Management	Will Comply
	Chapter 439 – Subdivision of Land	Requests Partial PSC Refusal to Apply
	Chapter 465 - Vehicles and Traffic	Will Comply
	Chapter 500 - Zoning	
	District Regulations	Requests Partial PSC Refusal to Apply
	Signs	Will Comply
	Fences, Walls, Hedges and Screen Plantings	Requests Partial PSC Refusal to Apply
	Clear Vision Areas	Will Comply
	Special Setback Requirements	Will Comply
	General Restrictions	Requests Partial PSC Refusal to Apply
		Compliance Summary

		Compliance Summary
<b>Town of Gates</b>	Chapter 70 - Building, Construction and Fire Prevention	Will Comply
	Chapter 83 - Dumping and Littering	Will Comply
	Chapter 90 - Excavations	Will Comply
	Chapter 100 - Flood Damage Prevention	Requests Partial PSC Refusal to Apply
	Chapter 131- Parking	Will Comply
	Chapter 155 - Solid Waste	Will Comply
	Chapter 156 - Storm Sewers	Will Comply
	Chapter 157 - Stormwater Management	Will Comply
	Chapter 158 - Streets and Sidewalks	Will Comply
	Chapter 190 - Zoning	
	District Regulations	Requests Partial PSC Refusal to Apply
	Noise	Requests Partial PSC Refusal to Apply
	Signs	Will Comply
	Fences	Will Comply
	Buffers and Screen Plantings	Requests Partial PSC Refusal to Apply
	Obstructions	Will Comply
	Grading	Will Comply
<b>Town of Henrietta</b>	Chapter 43 – Brush, Grass and Weeds	Requests Partial PSC Refusal to Apply
	Chapter 48 – Building and Development	Requests Partial PSC Refusal to Apply
	Chapter 84 - Drainage	Will Comply
	Chapter 119 - Fire Prevention	Will Comply
	Chapter 125 - Flood Damage Prevention	Requests Partial PSC Refusal to Apply
	Chapter 168 - Noise	Will Comply
	Chapter 205 - Property Maintenance	Requests Partial PSC Refusal to Apply
	Chapter 234 - Solid Waste	Will Comply
	Chapter 236 - Stormwater Management	Requests Partial PSC Refusal to Apply
	Chapter 261 - Trees	Will Comply



		<b>Compliance Summary</b>
	Chapter 273 - Vehicles and Traffic	Will Comply
	Chapter 277 - Vehicles, Motor-Drive	Will Comply
	Chapter 295 - Zoning	
	District Regulations	Requests Partial PSC Refusal to Apply
	Chapter A300 - Design Standards for Storm Drainage	Will Comply
<b>City of Rochester</b>	Chapter 10 – Improvements, Municipal and Local	
	Program for Street Improvements	Will Comply
	Chapter 20 - Article IV - Recycling and Recyclables	Will Comply
	Chapter 35 - Bill Posting and Advertising	Will Comply
	Chapter 39 - Building Code	Will Comply
	Chapter 59 - Health and Sanitation	Will Comply
	Chapter 69 - Littering	Will Comply
	Chapter 75 - Noise	Requests Partial PSC Refusal to Apply
	Chapter 89 - Trees	Requests Partial PSC Refusal to Apply
	Chapter 100 - Smoke and Air Pollution Control	Will Comply
	Chapter 104 - Streets and Street Encroachments	Will Comply
	Chapter 111 – Vehicle Traffic	Will Comply
	Chapter 120 - Zoning	
	District Regulations	Requests Partial PSC Refusal to Apply
	Temporary Uses	Will Comply
	Landscaping, Buffers and Screening	Requests Partial PSC Refusal to Apply
	Lighting	Will Comply
	Signs	Will Comply
	Drainage	Will Comply

## **7.2 County of Monroe**

All Project facilities including circuit 940, circuit 941, circuit 40, and Station 255 are located within Monroe County. Existing facilities affected by the proposed Project, including Station 418, Station 23, Station 80, and circuit 906, are also located within Monroe County.

### *7.2.1 Chapter 347 - Solid Waste*

§§347-9 and 347-10 of this chapter require that all solid waste generated within the County be transported or disposed at authorized solid waste facilities. §347-13 establishes certain requirements for vehicles used to haul, transport, or dispose of solid waste. §§347-27 to 347-37 of this chapter implement the County's solid waste management program to separate solid waste into recyclable and reusable material, as required by the New York Solid Waste Management Act of 1988.

### *7.2.2 Chapter 569 – Sanitary Code*

Article XIII of this chapter implements the provisions of §33-1004 of the ECL regarding notification requirements in advance of the application of pesticides, including herbicides used for vegetation management along utility rights-of-way. RG&E's Long Range Right-of-Way Management Plan includes provisions for advance notification in compliance with Article 33 of the ECL.

## **7.3 Town of Chili**

Project facilities in the town of Chili include underground and overhead portions of circuit 940, underground and overhead portions of circuit 941, the partial rebuild of circuit 906, circuit 40, and proposed Station 255.

### *7.3.1 Chapter 210 - Construction Codes, Uniform*

In this chapter, the Town of Chili has adopted the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Construction Code.

### 7.3.2 Chapter 223 - Design Criteria and Construction Specifications Manual<sup>2</sup>

§223-2.8.1 requires particular care be taken regarding development adjacent to the floodplains for the Genesee River, Black Creek, and Little Black Creek.

§ 223-2.9.1 requires that development projects be designed to minimize soil erosion.

§223-1A.3.1 requires flagging of the limits of project site areas to be cleared.

§223-1A.3.2 requires grubbing of all tree roots.

§223-1A.3.3 requires that materials derived from clearing and grubbing be removed from site within 15 days after cutting and prohibits the burying of land clearing materials on site.

§223-1B establishes standards for materials and construction methods associated with earthwork activities.

*The Town of Chili construction specifications established by Chapter 223, Design Criteria and Construction Specifications Manual have been designed primarily in support of residential and commercial development within the Town of Chili. For the construction of transmission facilities, the removal of cleared vegetation from the proposed right-of-way may not be preferable from an environmental perspective as greater harm to the environment may be realized as a result of efforts to remove cleared vegetation. The New York State Public Service Commission and Department of Public Service staff will be responsible for defining the methods to be employed during project construction through review and approval of the project's EM&CP. As a consequence, the proposed transmission right-of-way will be prepared and restored in accordance with the provisions of the project's EM&CP which, based on previously approved EM&CP documents, may allow for the stacking of logs or burying of tree stumps within the proposed right-of-way. Accordingly, the Applicant believes that Sections 1A.3.2, 1A.3.3 and 1B of Chapter 223 of the Town of Chili Code are unduly restrictive and requests that their application be waived.*

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<sup>2</sup> Chapter 233 of the Chili Town Code on eCode360 states that the current Design Criteria and Construction Standards are on file in the office of the Town Clerk. The Design Criteria and Construction Specifications Manual provided by the Town Clerk, updated on January 1, 1986, identifies Chapter 97 of the Town Code as containing the Design Criteria and Construction Standards. This chapter is referenced as Chapter 223 to promote consistency with the remainder of Exhibit 7.

### 7.3.3 Chapter 234 – Dumps and Dumping

§234-3 and §234-5 prohibit private dumps and the dumping of hazardous wastes, respectively.

### 7.3.4 Chapter 277 - Flood Damage Prevention

This chapter implements the National Flood Insurance Program. The floodplains associated with Little Black Creek and the Genesee River in the town of Chili crossed by a portion of the Project comprise special flood hazard areas as identified and defined on the flood insurance rate map for Monroe County prepared by FEMA. Additionally, §277-13F allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 277.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Insomuch as the transmission structures are not prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. Additionally, the Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction resulting in increased cost and schedule delays.*

### 7.3.5 Chapter 283 - Freshwater Wetlands

As provided by this chapter, the Town of Chili, pursuant to §24-0501 of the New York State Freshwater Wetlands Act (Article 24 of the ECL), has elected to fully undertake and exercise its regulatory authority with regard to activities subject to regulation under the Act. The Project is not subject to the permit requirements of Article 24; however, the Applicant will comply with the substantive provisions of this chapter and Article 24 of the ECL.

### 7.3.6 Chapter 352 – Noise

§352-4 prohibits unnecessary noise from any sources which are of such character, intensity, and duration as to be detrimental to the life or health of any individual or contrary to public welfare, especially between the hours of 10:00 pm and 7:00 am the following day; and noise from the erection, including excavation, demolition, alteration, or repair, of any building other than between 7:00 am and 8:00 pm except in cases of public safety or emergencies. However, the provisions of this chapter shall not apply to “noise generated by the installation and maintenance of utilities.”

### 7.3.7 Chapter 425 - Solid Waste

This chapter implements the Town’s solid waste management program to separate solid waste into recyclable and reusable material, as required by the New York Solid Waste Management Act of 1988.

### 7.3.8 Chapter 433 - Stormwater Management

This chapter sets forth the Town’s minimum stormwater management, pollution discharge, and erosion and sediment control requirements. The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. The Project’s EM&CP and associated erosion control measures will fulfill the NYSDEC’s erosion and sediment control requirements under the SPDES permit in accordance with ECL Article 17. Because the project is a PSL Article VII project, a separate SWPPP will not be required. Refer to Exhibits 4 and 8 for details. RG&E will not seek separate approval of the stormwater plan from the Town.

### 7.3.9 Chapter 439– Subdivision of Land

§439-22 regulates lot size and arrangement, access, and prevention of landlocked parcels.

*To the extent that they are applicable to the Project, the Applicant requests that the Commission refuse to apply the regulations regarding subdivision of land. The landlocked proposed site for Station 255 will require an access road that will bisect active agricultural land to connect to a minor arterial or a local road. On the other hand, the remote location of the proposed site and*

*the surrounding rolling topography decreases its visibility to the general public, which is considered preferable for the substation.*

#### *7.3.10 Chapter 465 - Vehicles and Traffic*

§§465-2 through 465-6 provide specific limitations and restrictions regarding the parking of motor vehicles, including commercial vehicles. §465-17 prohibits vehicles over three or four tons on certain roads without a permit. Any vehicle with a gross weight over three tons is excluded from traveling on Grenell Drive, and any vehicle with a gross weight over four tons is excluded from traveling on Archer Road, Beaver Road Extension, Old Scottsville-Chili Road, Chestnut Drive, Rose Road, Omega Drive, Emerald Point, Fisher Road, Weidner Road (between Fisher Road and Beahan Road), and Chili Avenue Extension.

#### *7.3.11 Chapter 500 - Zoning*

##### *7.3.11.1 Zoning Map and Districts*

Figure 7.14-1 is the Town of Chili Zoning Map. The proposed circuit 940 and circuit 941 rights-of-way are located in the following districts: the Floodway (FW), Floodplain Overlay (FPO), Airport Overlay (AOD), Limited Industrial (LI), General Industrial (GI), Rural Agricultural (RA-10), and Agricultural Conservation (AC) Districts. The partial rebuild of circuit 906, circuit 40, and the proposed site for Station 255 are located in the AC District.

##### *7.3.11.2 District Regulations*

The Town's regulations relating to the AOD address height and other safety matters in the vicinity of Greater Rochester International Airport, and refer applicants to a process before Monroe County planning agencies. The Commission's review of the Project under PSL Article VII provides the review process that otherwise would be conducted under these regulations. Moreover, Exhibit 8 details the Applicant's intention to file a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the FAA to confirm that the proposed facilities and construction activities in the vicinity of the Airport will not impact air navigation or airport operations.

§500-9 contains the FW District rules and is designed to fulfill the requirements of the National Flood Insurance Program. Utility transmission lines are considered special permit uses in this

district. The dimensional requirements of the FW District are a minimum lot area of five acres, lot frontage of 300 feet, and front setback of 100 feet from the road right-of-way. §500-10 sets forth the rules for the FPO District and is designed to fulfill the requirements of the National Flood Insurance Program.

§500-11 governs uses in the RA-10 District. Public utility buildings, structures, and uses are special permit uses in this district. The dimensional requirements of the RA-10 District, subject to 75-foot setbacks from “affected major highways,” as defined below, are a minimum lot area of 10 acres, lot width of 500 feet, front yard of 100 feet, and side and rear yards of 50 feet each. The maximum building height in this district is 35 feet, except for taller farm buildings or structures on farms, provided they are at least 100 feet from every property line.

§500-20 governs uses in the LI District. Public utility buildings are special permit uses in this district. The dimensional requirements of the LI District are a minimum lot of 62,500 square feet, lot width and depth of 250 feet, front yard of 60 feet (or 75 feet on “affected major highways” as defined below), side yard of 40 feet, and rear yard of 80 feet. The maximum lot coverage of structures is 40% of the total lot area, and the maximum building height is 50 feet. If the use is located adjacent to another district (except the GI District), a full length landscaped 100 foot buffer is required. The architectural treatment and general appearance of all buildings and grounds must be in keeping with the purpose of the LI District and must be a visual asset.

§500-21 governs uses in the GI District. Public Utility buildings are permitted outright in this district. The dimensional requirements of the GI District are a minimum lot area of 50,000 square feet, lot width and depth of 250 feet, front yard of 50 feet (or 75 feet on “affected major highways” as defined below), side yard of 35 feet, and rear yard of 40 feet. The maximum lot coverage of structures is 50% of the total lot area, and the maximum building height is 50 feet. If the use is located adjacent to another district (except the LI District), a full length landscaped buffer of 100 feet in width is required. The architectural treatment and general appearance of all buildings and grounds must be in keeping with the purpose of the GI District and must be a visual asset.

§500-27 governs the AC District. Public utility buildings, structures, and uses – but not including “...power plants and similar uses” – are special permit uses in this district. Dimensional requirements in the AC District, including lot width and depth, setbacks, and maximum lot

coverage, are specified for single family residences, farms, and forest or wildlife preserves. These requirements are not applicable to the Project notwithstanding the minimum lot sizes set forth for the AC District, increased lot sizes may be required if the developed site is not served with public sanitary sewer facilities. The maximum building height in the AC District is the lesser of two stories or 35 feet.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the use, dimensional, area, setback and landscaped buffer and architectural requirements detailed in the Town of Chili zoning ordinance.*

*Circuits 940 and 941 in the Town of Chili will be predominantly overhead and partially underground within existing electric transmission rights-of-way and partially overhead along a railroad right-of-way; the dimensional (i.e., height), area and setback requirements that pertain to buildings and structures are not relevant to the underground portions of the proposed facilities. For the overhead portions of circuits 940 and 941, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria rather than minimum lot size. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for circuits 940 and 941. It is not technologically feasible to comply with the Town's maximum height restrictions.*

*The partial rebuild of circuit 906 will be entirely overhead along a railroad right-of-way in the AC District in the Town of Chili. Circuit 40 will be entirely overhead along the southern edge of the NYPA 345 kV right-of-way in the AC District. In addition, the Applicant has determined based on NESC criteria and prudent engineering considerations that the optimal structure height for the partial rebuild of circuit 906 is 68 to 70 feet, and the optimal structure height for circuit 40 is 100 feet. It is not technologically feasible to comply with the Town's maximum height restriction of 35 feet for the AC District.*

*Assuming the proposed Station 255 meets the definition of a public utility use that is subject to a special use permit in the AC District, the need for a special use permit for the Project is preempted by PSL Section 130; therefore, the Applicant will not seek a special use permit from the Zoning Board of Appeals for Station 255. Alternatively, if Station 255 were considered a*



*“similar use” to a “power plant”, §500-27 could be interpreted as prohibiting the construction of Station 255 in the AC District. To the extent §500-27 could be so interpreted, the Applicant requests that the Commission refuse to apply that provision as being unduly restrictive. The Applicant has determined, based on NESC criteria and prudent engineering considerations that the height of certain bus work and support structures at Station 255 will range between 85 feet and 100 feet, and it is not technologically feasible to comply with the Town’s maximum height restriction of 35 feet in the AC District.*

#### 7.3.11.3 Signs

§§500-44 through 500-53 set forth the Town’s zoning ordinance regulations for signs. Signs regulating the use of a property, directing traffic on private property, and/or identifying the builder or contractor during the construction period are allowed as of right.

#### 7.3.11.4 Fences, Walls, Hedges and Screen Plantings

§500-54 governs fences, walls, hedges, and screen planting, and provides criteria, requirements and limitations regarding the location and height of such appurtenances. No fence shall be constructed of barbed wire or be electrified unless said fence is on a farm.

*To the extent that these requirements and limitations are inconsistent with the security requirements of Station 255, the Applicant requests that the Commission refuse to apply the local provisions regarding the type and location of fences. The proposed site for Station 255 is somewhat isolated from local roads and public areas and because this facility will be critical energy infrastructure, security requirements will dictate the position, type and materials for the security fence. The Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission’s reliability criteria and the needs of the Applicant’s consumers. The needs of the Applicant’s consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. The needs of the consumers outweigh the impact on this municipality that would result from the Commission’s refusal to apply these local requirements.*

#### 7.3.11.5 Clear Vision Areas

§500-55 establishes vision clearance areas to provide safe intersection sight distance.

#### 7.3.11.6 Special Setback Requirements

§500-59 regulates access to and from certain roads and lists the “affected major highways” (21 State, County or Town roads), including Scottsville Road, that require front setbacks of 75 feet from the highway right-of-way line.

#### 7.3.11.7 General Restrictions

§500-61 provides a number of general restrictions regarding the development and use of property in the Town of Chili: Lots must abut a street for at least 40 feet, subject to the exceptions for flag lots (Subsection A); yards must be graded with a minimum 2% slope (Subsection B); temporary buildings, construction trailers, equipment, and materials used during construction are permitted while work is in progress but must be removed upon completion of the construction work (Subsection E); land may not be used in any way which creates an objectionable condition, including noise or electrical disturbance (Subsection F); fill permits and tree removal permits are required before any fill activities above existing grade and tree removal in wooded or conservation areas (Subsection H); flag lots are subject to the approval of the Planning Board and must include an access way with a minimum width of 40 feet (Subsection K).

*To the extent the Project facilities and activities are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are subject to interpretation and potentially unduly restrictive in view of the existing technology and cost factors. Furthermore, this request cannot be obviated by design changes to the Project. The Project will be designed and constructed to ensure that the Commission’s guidelines regarding electric and magnetic field effects are met. The Applicant will also implement noise mitigation measures at Station 255 to minimize potential noise levels at adjacent properties; these are identified and detailed in Exhibit 4. The Applicant could incur considerable additional cost if it were required by the Town of Chili to achieve unreasonable reductions in the Project’s noise or electric and magnetic field levels. These costs outweigh the impact on this municipality that would result from the Commission’s refusal to apply these local requirements.*

## **7.4 Town of Gates**

Project facilities in the town of Gates include an underground portion of circuit 940, underground and overhead portions of circuit 941, and improvements to Station 418.

### *7.4.1 Chapter 70 - Building, Construction and Fire Prevention*

In this chapter, the Town of Gates has adopted the New York State Uniform Fire Prevention and Building Code. The Applicant will comply with the applicable substantive provisions of this code.

### *7.4.2 Chapter 83 - Dumping and Littering*

§83-9 prohibits the driving of any vehicle unless such vehicle is constructed to prevent any load or litter from being blown onto any street or other public place.

### *7.4.3 Chapter 90 - Excavations*

§90-2 prohibits the maintenance or ownership of an excavation in which water is allowed to stand for a period of 30 days or more “without having the same properly drained or filled or made free of such water.”

### *7.4.4 Chapter 100 - Flood Damage Prevention*

This chapter implements the National Flood Insurance Program. (These provisions are substantially duplicated in Article XVIII of this Town’s zoning ordinance.) The floodplains associated with Little Black Creek in the Town of Gates crossed by a portion of the Project comprise a special flood hazard area as identified and defined on the flood insurance rate map for Monroe County prepared by FEMA. Additionally, §100-13F allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 100.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Inasmuch as the transmission structures are not prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. Additionally, the*

*Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction resulting in increased cost and schedule delays.*

#### *7.4.5 Chapter 131- Parking*

§131-7A prohibits parking vehicles on public roads from November 1 and April 1, between the hours of 12:00 midnight and 8:00 a.m. §131-7B prohibits parking or stopping an unattended vehicle on any public road or street that is an emergency route.

#### *7.4.6 Chapter 155 - Solid Waste*

Chapter 155 regulates the collection, storage, or accumulation of commercial waste on any premises. It provides that solid waste must be separated into recyclable, reusable, or other components.

#### *7.4.7 Chapter 156 - Storm Sewers and Chapter 157 - Stormwater Management*

Chapters 156 and 157 set forth the Town's minimum stormwater management, pollution discharge, and erosion and sediment control requirements. The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. In addition, as a PSL Article VII project, the Project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control requirements under the SPDES permit in accordance with ECL Article 17, and a separate Stormwater Pollution Prevention Plan ("SWPPP") will not be required. Refer to Exhibits 4 and 8 for details. RG&E will not seek separate approval of the stormwater plan from the Town.

#### *7.4.8 Chapter 158 - Streets and Sidewalks*

§158-2 prohibits digging any trench or ditch on any public highway, or otherwise disturbing any pavement or any other portion of any public highway unless written permission has been granted by the Town Board. The Applicant will comply with the substantive provisions of this section but will not seek written permission from the Town Board.

#### *7.4.9 Chapter 190 - Zoning*

##### *7.4.9.1 Zoning Map and Districts*

Figure 7.13-1 is the Town of Gates Zoning Map. The circuit 940 right-of-way is located in the following districts: Residential - One Family (R-1-11, which is a subset of the R-1 District), Limited Industrial (“LI”), General Industrial (“GI”), Floodway (“FW”), and Floodplain Overlay (“FPO”) Districts. The circuit 941 right-of way is located in the LI, GI, and General Business (“GB”) districts. Station 418 is located in the GI District.

##### *7.4.9.2 District Regulations*

In the LI and GI Districts, public utility uses are permitted as of right. In the R-1 and GB Districts they are permitted upon obtaining a conditional use permit. The Project facilities are not expressly included among the permitted uses in the FW (§190-66) and FPO (§190-87) districts. §190-52, which states that “Nothing in this chapter shall prohibit the provision of essential services, provided that the installation of such service does not violate any other applicable provision of this chapter. Nothing in this section shall be construed to permit the erection, construction or enlargement of any aboveground structure except utility poles and wires, except as otherwise permitted in this chapter,” may be interpreted to permit such facilities.

§190-54 provides that accessory structures in any residential zone are subject to the same location requirements affecting the principal structure on a lot; except that “such accessory structures may be placed not less than five feet from any rear lot line or the rear yard portion of any side lot line; provided, however, that no such structure be built closer to any other lot line than the minimum front yard or side yard setback required on the lot upon which the structure is proposed or upon the contiguous lot closest to the location of such accessory structure, nor shall any structure be placed closer than the established setback from any street right-of-way, except

as otherwise specifically provided herein.” §190-55 provides that accessory structures in nonresidential districts are subject to the same location requirements as are required for all principal structures within such districts.

§190-94 regulates the dimensional requirements applicable to the R-1-11 District. In the R-1-11 District, front setbacks are required to be no less than 50 feet along state and county roads and no less than 35 feet along all other roads. The minimum lot area is 11,000 square feet. The minimum lot width is 80 feet, with a maximum depth-to-width ratio of 2.5 to 1. The minimum side yard setback is the lesser of (i) 10% of the required lot width at the front setback line, or (ii) 10 feet, but in no event may any side yard be less than 6 feet. The minimum rear yard setback is 30 feet. The maximum height of a principal structure is 35 feet and an accessory structure is 15 feet.

§190-144 regulates the dimensional requirements for GB Districts, which are as follows: When adjacent to Residential, Multiple Residential, Neighborhood Business and/or Business, Non-Retail Districts, there shall be a minimum setback distance equal to the height of the tallest structure closest to that district boundary on the GB site plus a 100-foot buffer area. Front setbacks must be no less than 100 feet, and no parking is permitted in the 50 feet nearest a state or county road. Side and/or rear yard setbacks shall be equal to the height of the tallest structure on either lot or 25 feet, whichever is greater. The depth to width ratio shall not exceed 3 to 1. Principal structures shall not exceed 40 feet in height, and accessory structures shall not exceed 20 feet in height.

§190-152 regulates the dimensional requirements for LI Districts, which are as follows: Front setbacks on a state or county road shall be no less than 100 feet, except that, when adjacent to any Residential District and/or Neighborhood Business District, a minimum setback is required equal to the height of the tallest structure closest to that district boundary on the LI site, plus a 100 foot buffer. Side and rear setbacks must be equal to the height of the tallest structure on either lot or 30 feet, whichever is greater. The depth-to-width ratio shall not exceed 3 to 1. Structures shall not exceed 50 feet in height.

§190-161 regulates the dimensional requirements for GI Districts, which are as follows: When adjacent to Residential, Multiple Residential, and Neighborhood Business Districts, there shall be a minimum setback distance equal to the height of the tallest structure closest to that district

boundary on the GI site plus a 100-foot buffer area. Front setbacks must be no less than 100 feet and no parking is permitted in the 50 feet nearest a state or county road. Side and rear yard setbacks shall be equal to the height of the tallest structure on either lot or 40 feet, whichever is greater. The depth to width ratio shall not exceed 4 to 1. Structures shall not exceed 50 feet in height.

§§190-167 through 190-172 regulates the Airport Overlay Districts (AODs). The right-of-way is located in all three types of AODs in the Town (AOD-a, AOD-b, and AOD-c). The Town's regulations relating to these districts address height and other safety matters in the vicinity of Greater Rochester International Airport, and refer applicants to a process before Monroe County planning agencies. The Commission's review of the Project under PSL Article VII provides the review process that otherwise would be conducted under these regulations. Moreover, Exhibit 8 details the Applicant's intention to file a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the Federal Aviation Administration ("FAA") to confirm that the proposed facilities and construction activities in the vicinity of the Airport will not impact air navigation or airport operations.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the use, dimensional, area and setback requirements detailed in the district and overlay district regulations in the Town of Gates zoning ordinance.*

*Circuit 940 in the Town of Gates will be entirely underground within an existing electric transmission right-of-way; as such, the dimensional (i.e., height), area and setback requirements that pertain to structures are not relevant to this proposed facility.*

*Circuit 941 in the Town of Gates will be partially underground within an existing electric transmission right-of-way and partially overhead along a railroad right-of-way. The zoning requirements have no relevance to the proposed underground portion of circuit 941. For the overhead portion of circuit 941, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria rather than minimum lot size. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for*

*circuit 941. Given the current design standards and technology for overhead 115 kV transmission lines, it is not feasible to comply with the Town's maximum height restrictions.*

*Station 418 is a permitted use in the GI District in which it is located, and the proposed improvements at this station will comply with the 50-foot height limitation in this district. However, Station 418 is by necessity situated adjacent to the existing electric transmission right-of-way, which is within an R-1-11 District in this location. The setback and buffer requirements between the substation (GI District) and adjacent electric transmission right-of-way (R-1-11 District) are not warranted and contrary to accepted engineering practice since they would only serve to further separate two utility uses (i.e., the transmission facility and the interconnected substation). Compliance with these requirements would increase the land requirements for Station 418, require relocation of the existing station, and increase the cost of the project without any corresponding benefit to area residents and ratepayers.*

#### 7.4.9.3 Noise

§190-157 provides that noise generated by uses in the LI District be no more audible than the noise emanating from the ordinary street traffic and from other commercial or industrial uses, except that in no event shall it be necessary to reduce the noise to below 65 decibels in residential or business non-retail districts, or to below 70 decibels as measured from adjacent property in a neighborhood and/or light and general industrial district. §190-166 provides that objectionable noise to any land adjacent to the site is prohibited in the GI District. Noise is not specifically referenced within the R-1, GB, FW and FPO Districts.

*To the extent the Project construction activities are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the existing technology and cost factors. Furthermore, this request cannot be obviated by design changes to the Project because noise is unavoidable given the nature of such construction activities. A number of the processes and activities to be conducted in the course of construction, including motorized equipment engaged in vegetation clearing, excavation and erection of structures, make compliance technically impossible or impracticable. The Applicant will implement noise mitigation measures during the course of the proposed Project; these are identified and detailed in Exhibit 4. These measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are*



*mitigated to the maximum extent practicable. Moreover, the Applicant would incur considerable additional cost if it were required to achieve full compliance with the local requirements applicable in this municipality by further adjusting the Project's noise levels. These costs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. The sound levels generated by the equipment at Station 418 have not been characterized as "objectionable," and the proposed improvements to accommodate circuit 940 will not change the sound levels at this station; therefore, Project operations are expected to remain in compliance with this local ordinance.*

#### 7.4.9.4 Signs

Article V of the Town's zoning ordinance sets forth regulations applicable to signs. §190-22 requires all signs to comply with applicable regulations of the Building Code as to construction, erection, and electrical needs. Additionally, signs that meet the following criteria are permitted in all districts relating to the Project without the issuance of a permit: signs for (i) identification purposes as long as it is no more than one square foot in area, (ii) regulating the use of a property as long as it is no more than two square feet in area, or (iii) guiding and directing traffic as long as it is no more than three square feet in area and no more than 60 inches tall. §190-23 sets forth the regulations for signs in residential districts and allows illuminated signs for public safety and one sign denoting the contractor placed on construction premises that shall not exceed 32 square feet. §190-25 sets forth the signage rules for all industrial districts and allows directional, warning, or information signs within an industrial complex which are not visible from a public highway and shall not exceed 25 square feet in area and six feet in height.

#### 7.4.9.5 Fences

§190-31 prohibits the use of barbed wire, spikes, chipped glass, electricity, or similar devices with or as part of any fence, and §190-32 sets forth requirements for fencing in residential districts. §190-33 sets forth requirements for fencing in nonresidential districts and, in general commercial and industrial districts, allows barbed wire or electric fences that are eight feet high and would not be detrimental to health, safety, or welfare of any person coming in contact with it, if it can be demonstrated that the fence is needed to prevent entry to any potentially hazardous area or to secure an area where materials and/or equipment is stored. The Applicant will comply with the substantive provisions of these sections with regard to fencing at Station 418.

#### 7.4.9.6 Buffers and Screen Plantings

§190-34 requires a buffer area on any lot within a GB, LI, or GI District containing screen plantings of trees, hedges, and shrubs of at least 100 feet wide along the boundary of any R District.

*To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. The needs of the consumers outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. In addition, this buffer and screen planting requirement is impractical and contrary to industry standards and practices in the area between Station 418 and the adjacent electric transmission right-of-way.*

#### 7.4.9.7 Obstructions

§190-35 requires a clear vision zone at all corners of intersecting roads or road junctions.

#### 7.4.9.8 Grading

§190-51 requires that all structures be located with a ground elevation that provides a sloping grade, so that surface drainage flows away from the walls of such structures and any adjacent structures on adjacent properties, and not jeopardize existing drainage systems.

### **7.5 Town of Henrietta**

Project facilities in the Town of Henrietta include a portion of circuit 40 and proposed improvements at existing Station 80 to accommodate circuit 40.

#### *7.5.1 Chapter 43 – Brush, Grass and Weeds*

Under §43-3, the Town Board may, by resolution, require a property owner to cut, trim or remove brush, grass, or weeds, or to spray with herbicides, and cut, trim, remove, or destroy

poisonous shrubs or weeds. Furthermore, §43-4 allows the Town Board to specify the place, manner and time when this work must occur.

*To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.*

#### 7.5.2 Chapter 48 – Building and Development

§48-14 allows the Fire Marshall or Building Inspector to issue a stop work order if reasonable grounds exist to believe that work on any building or structure is being performed in violation of the provisions of the applicable building laws, ordinances, or regulations, or if the work is being performed in an unsafe and dangerous manner.

*The Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction resulting in increased cost and schedule delays.*

#### 7.5.3 Chapter 84 – Drainage

§84-11 establishes general requirements for drainage systems and plans, in that developments shall be protected from flood hazard and inundation by stormwater, springs, and other surface waters. §84-12 establishes standards for the design of drainage systems and plans. §84-13B requires the establishment of Town drainage easements along natural major watercourses of adequate width to accommodate a development's storm water flow.

#### 7.5.4 Chapter 119 – Fire Prevention

§119-7 requires compliance with the New York State Uniform Fire Prevention and Building Code. §119-12 prohibits obstruction of fire lanes and fire hydrants, and §119-13A requires the provision of fire lanes when premises are not accessible from public roads. Additionally, §119-13E, F, and G2 provide for the establishment of various standards and prohibitions regarding the storage and handling of hazardous liquids, the transportation of hazardous chemicals, and motor vehicle routes for vehicles transporting explosives and blasting agents, respectively. §119-13G1 prohibits the storage of explosives and blasting agents. Overall, §119-15 requires compliance with provisions of Chapter 119, Fire Prevention, for new and existing buildings and conditions.

#### 7.5.5 Chapter 125 – Flood Damage Prevention

This chapter implements the National Flood Insurance Program. The floodplains associated with the Genesee River that are crossed by a portion of the Project comprise special flood hazard areas as identified and defined on the flood insurance rate map for Monroe County prepared by FEMA. Additionally, §125-12F allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 125.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Insomuch as the transmission structures are not prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. Additionally, the Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction resulting in increased cost and schedule delays.*

#### 7.5.6 Chapter 168 – Noise

§168-2A prohibits unreasonably loud disturbances or unnecessary noise, which shall be defined as any excessive or unusually loud sound or any sound which crosses at least one real property line and which, in the opinion of persons or agents charged with the responsibility of enforcing this chapter, either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a person or neighborhood. §168-2B(3) requires the use of mufflers on vehicle engines and §168-2B(4) limits construction activity to the hours between 8:00 am and 10:00 pm. §168-6 provides exemptions for permitted construction activities and federal and state regulations that preempt town authority.

#### 7.5.7 Chapter 205 – Property Maintenance

§205-5 requires (a) the provision of adequate site drainage to prevent the development of stagnant ponds; (b) maintenance of fences and other minor construction in safe and substantial condition; (c) maintenance of steps, walks, driveways, and similar paved areas so as to afford safe passage under normal use and weather conditions; (d) premises be kept clear of physical hazards, rodent harborage, and infestation; and, (e) elimination of heavy undergrowth and accumulation of noxious plant growth. Ground cover shall not exceed six inches in height. §205-7 requires treatment of exterior structure surfaces to protect deterioration and weathering and maintenance of buildings and structures such that they do not become a hazard. §205-8 requires premises to be maintained free of infestation and adequate measures to prevent infestation. §205-9 requires property be maintained free of litter and establishes standards for collection, storage and handling of refuse. §205-11 establishes responsibilities of property owners regarding compliance with the provisions of Chapter 205, Property Maintenance.

*To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements regarding property maintenance, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. These consumer needs*

*outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.*

#### *7.5.8 Chapter 234 – Solid Waste*

§234-4 requires provision of adequate refuse receptacles on premises and establishes standards for placement for collection. §234-5 prohibits accumulation of garbage, refuse, yard trimmings or brush on properties. §234-6 prohibits the depositing of any garbage, refuse, yard trimmings or brush in or upon any portion of public highway and streets and property of others. Article V of this chapter (§§234-13 through 234-22) establishes the Town's recycling program and requires the separation of recyclables from other solid wastes.

#### *7.5.9 Chapter 236 – Stormwater Management*

§236-8 prohibits discharging any materials into the municipal storm drain system or waters of the United States. Pursuant to §236-12, the Town will adopt best management practices for any activity that may contribute to stormwater contamination. Article III of this chapter (§§236-15 through 236-24) establishes the Town's program for regulation of stormwater management, including erosion and sediment control for land disturbance and construction activities. Article IV of this chapter (§§236-25 through 236-35) sets forth the requirements for the design and management of post-construction stormwater pollution prevention measures. §236-36 allows the Fire Marshall or Building Inspector to issue a stop work order if reasonable grounds exist to believe that work on any site is proceeding in violation of the provisions of any applicable law, code, ordinance, or regulation, or if the work is being performed in an unsafe and dangerous manner.

*The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. The Project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control requirements under the SPDES permit in accordance with ECL Article 17, and because the project is a PSL Article VII project, a separate SWPPP will not be required. Refer to Exhibits 4 and 8 for details. RG&E will not seek separate approval of the stormwater plan from the Town. The Applicant also requests that the Commission refuse to apply the local stop work*

*order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the Project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction resulting in increased cost and schedule delays.*

#### *7.5.10 Chapter 261 - Trees*

§261-7 prohibits any person from intentionally damaging, cutting, carving, transplanting, or removing any public tree unless specifically authorized by the Municipal Arborist. §261-9 requires suitable guards to be placed around all trees located on any street or other public property and near any excavation or construction to prevent injury to such trees, and also prohibits performing any excavation within 10 feet of any public tree without procuring a permit from the Municipal Arborist.

#### *7.5.11 Chapter 273 – Vehicles and Traffic*

§273-4 prohibits stopping, standing, and parking of vehicles in certain locations such as within 15 feet of a fire hydrant, in front or within 5 feet of a public driveway, within an intersection, within 20 feet of a crosswalk at an intersection, within a fire lane or on a sidewalk.

#### *7.5.12 Chapter 277 – Vehicles, Motor-Drive*

§277-3 prohibits driving of motor vehicles (e.g., two-wheel and four-wheel all-terrain vehicles) on private property without permission of landowner.

#### *7.5.13 Chapter 295 – Zoning*

##### *7.5.13.1 Zoning Map and Districts*

Figure 7.6-1 is the Town of Henrietta Zoning Map. The proposed right-of-way for circuit 40 is located in the Industrial (“I”) District and the Residential (“R-1-15”) District; Station 80 is located in the R-1-15 District.

### 7.5.13.2 District Regulations

§295-6 establishes permitted uses within R-1 zoning districts and does not reference public utility uses. §295-7 states “no structure in a residential district shall exceed two stories of any kind above the basement...” This section also establishes a maximum height of 35 feet for certain types of buildings within residential zoning districts, except as may be allowed by special permit. For the R-1-15 District, §295-9 requires (i) a 15,000 square foot minimum lot area, (ii) an 80 foot minimum lot width, (iii) with some specified exceptions, and depending upon the type of road(s) located adjacent to the lot in question, a 40 to 60 foot minimum building front line setback, (iv) a minimum side yard setback equal to the greater of 10% of lot width or 8 feet, and (v) a 10 foot minimum rear yard setback.

§295-24 and §295-25 establish “as-of-right” permitted uses and prohibited uses, respectively, within the Industrial District. While public utility uses are not expressly referenced, §295-24.A(37) could be interpreted as allowing such uses by special permit. §295-26 imposes a maximum building or structure height of 40 feet within the Industrial District. This height requirement can be exceeded by special permit. §295-27 requires (i) depending upon specified circumstances, a minimum front yard depth of between 80 feet and 125 feet, (ii) a minimum side yard width of 5 feet, except on corner lots where no buildings may be closer than 50 feet to the side line of the lot abutting the side street, and (iii) a minimum rear yard depth of 60 feet, and (iv) where a building or structure abuts a residential district, a minimum 50 foot buffer zone.

*To the extent Chapter 295 would prohibit utility uses or structures in an I District or in an R-1-15 District, the Applicant requests that the Commission refuse to apply such prohibition as being unduly restrictive. In addition, to the extent that they are applicable to the proposed Project, the Applicant also requests that the Commission refuse to apply the yard, setback and height requirements for the R-1-15 District and the Industrial District prescribed in Chapter 295. For circuit 40, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 80 to 100 feet for the structures for circuit 40. It is not technologically feasible to comply with the Town’s height restrictions in the R-1-15 and Industrial Districts. In addition, the*



*Applicant requests that the Commission refuse to apply the buffer zone requirements for the Industrial District; compliance with these requirements would increase the land requirements for the circuit 40 right-of-way and increase the cost of the project without any corresponding benefit to area residents and ratepayers.*

#### *7.5.14 Chapter A300 – Design Standards for Storm Drainage*

This Chapter imposes design standards to protect against flooding, provide clean channels for runoff, prevent encroachments on drainage channels, and equitably apportion the cost of improvements to protect scenic areas. The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. In addition, as a PSL Article VII project, the Project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control requirements under the SPDES permit in accordance with ECL Article 17, and a separate SWPPP will not be required. Refer to Exhibits 4 and 8 for details.

### **7.6 City of Rochester**

Project facilities in the City of Rochester include underground and overhead portions of circuit 941 and proposed improvements at existing Station 23.

#### *7.6.1 Chapter 10 – Improvements, Municipal and Local*

In §10-2, the program for street improvements states that no pavements, except temporary pavements, shall be laid without express permission from the Commissioner of Environmental Services before all necessary trenching has been accomplished and the backfill has been in place and settled for a period of nine months. Additionally, public utilities and others having occasion to trench in City streets shall be notified, so far as possible, as to the date on which trenching shall be required to be completed according to the program for street improvements.

#### *7.6.2 Chapter 20, Article IV - Recycling and Recyclables*

This article implements the City of Rochester's solid waste management program to separate solid waste into recyclable and reusable material.

### *7.6.3 Chapter 35 - Bill Posting and Advertising*

§35-1 prohibits the writing on or affixing of any handbill or sign on any street appurtenance, including electric light or power or telephone poles.

### *7.6.4 Chapter 39 - Building Code*

The City of Rochester has adopted the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

Article III of this chapter provides additional regulations for certain structures and activities. §39-307 provides that fences, walls, and retaining walls, permanent or temporary, be constructed and maintained to be safely self-supporting. §39-311 governs materials and design for signs and structural supports.

Article IV of this chapter addresses site preparation and stormwater pollution prevention. §39-405 requires a permit before certain site preparation activities are undertaken. §39-410 requires that owners prevent damage to public utilities or services within the limits of grading, prevent damage to adjacent property and promptly remove all hazardous soil, debris, and other materials deposited on public thoroughfares during transit. §39-411 specifies that grading plans and specifications include provisions for erosion and sediment control in accordance with accepted engineering standards and the "Guidelines for Erosion and Sediment Control in Urban Areas of New York State." §39-423 requires that for projects applying for coverage under the NYSDEC SPDES general permit for stormwater discharges from construction activity, the applicant shall submit a copy of the SWPPP, a notice of intent (NOI), and other documentation to the City of Rochester Stormwater Management Officer. §39-423 specifies the technical requirements of a SWPPP.

To the extent that these regulations are applicable to the Project, the Applicant will comply with the substantive provisions of this chapter. The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. In addition, as a PSL Article VII project, the Project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control

requirements under the SPDES permit in accordance with ECL Article 17, and a separate SWPPP will not be required. Refer to Exhibits 4 and 8 for details.

#### *7.6.5 Chapter 59 - Health and Sanitation*

§59-40 governs vehicles transporting stone, gravel, sand, dirt, and other similar materials.

#### *7.6.6 Chapter 69 - Littering*

§69-4 prohibits driving a vehicle unless it is built or loaded so as to prevent any contents from being deposited upon any street or other public place or private property.

#### *7.6.7 Chapter 75 - Noise*

§75-7 prohibits sounding any horn or signaling device on any vehicle, except as a danger warning. §75-9 prohibits operating any motor vehicle in a manner that the sound level emitted therefrom exceeds 80 dB(A) either (a) at a distance of 25 feet or more from the path of the vehicle when operated on a public street or other public place, or (b) at or beyond the property line when operated on private property. §75-10 prohibits construction activities between the hours of 10:00 p.m. and 7:00 a.m. on any day of the week, except in the instance of emergencies where work is allowed for a single continuous period not to exceed 72 hours. §75-11 prohibits creating any noise on any street or other public place, or on private property adjacent to any school, institution of learning, church, or court while the same is in use, or adjacent to any hospital, nursing home, or home for the aged, if the noise unreasonably interferes with the working of such school, institution of learning, church, or court or disturbs or annoys patients in a hospital, nursing home, or home for the aged. §75-13 prohibits excessive noise when loading or unloading any vehicle.

Construction activities on the Project will generally be scheduled to occur between the hours of 7:00 a.m. and 6:00 p.m. six days per week (Monday through Saturday). Considering the need for excavation and underground construction near Station 23 in downtown Rochester, construction activities in that area could be scheduled to occur on Sundays to minimize traffic impacts.

*To the extent the Project construction activities are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the existing technology and cost factors. Furthermore, this*

*request cannot be obviated by design changes to the Project because noise is unavoidable given the nature of such construction activities. A number of the processes and activities to be conducted in the course of construction, including motorized equipment engaged in vegetation clearing, excavation and erection of structures make compliance technically impossible or impracticable. The Applicant will implement noise mitigation measures during the course of the proposed Project; these are identified and detailed in Exhibit 4. These measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. Moreover, the Applicant would incur considerable additional cost if it were required to achieve full compliance with the local requirements applicable in this municipality by further adjusting the Project's noise levels. These costs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.*

#### *7.6.8 Chapter 89 - Trees*

§89-9 prohibits cutting down any tree in a public street or place, cutting any branch of such a tree, trimming any branch of such a tree, pruning or spraying such a tree, or attaching any wire to such a tree, and prohibits injuring any tree in a public street or place, or attaching or hanging anything on such a tree. It also requires that tree trimming by an electric utility be limited by actual necessities, and be done in a neat and workmanlike manner with a saw and not an axe or hatchet. §89-9 also provides that in doing any work on the surface or below the surface of a street, suitable guards be placed around all nearby trees in or on any highway, park, or other public property to prevent injury to such trees; such additional precautions as may be required shall be taken to prevent damage to trees.

*To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.*

*In addition, the tree trimming “necessities” are established by NERC reliability standards as implemented by RG&E under the vegetation management program approved by the PSC.*

#### *7.6.9 Chapter 100 - Smoke and Air Pollution Control*

§§100-3 and 100-4 determine dense smoke to be a nuisance except under certain situations and prohibits the emission of dense smoke, fumes, noxious gases, strong odors, dust, dirt, soot, cinders, or fly ash from any fuel-burning equipment, portable equipment, or other similar contrivance or from any open fire.

#### *7.6.10 Chapter 104 - Streets and Street Encroachments*

§104-12 regulates excavations near street lines. §104-14 provides that traffic control devices be installed to conform to the requirements of the City’s Traffic Control Board and the New York State Manual of Uniform Traffic Control Devices. §104-16 requires that persons working or making excavations in streets or public places, restore the street or public place to its condition prior to the work or excavation.

#### *7.6.11 Chapter 111 – Vehicle and Traffic*

This chapter regulates various aspects of traffic control and vehicle operations including: parking (§§111-14, 111-15, 111-16, 111-17, and 111-23); street closings (§111-54); vehicular weight (§111-58); and oversized and overweight vehicles (§111-78).

#### *7.6.12 Chapter 120 – Zoning*

##### *7.6.12.1 Zoning Map and Districts*

Figure 7.15-1 is the City of Rochester Zoning Map. The proposed route for circuit 941 is located along active railroad corridors that traverse Industrial (“M-1”), Medium-Density Residential (“R-2”), and Center City (CCD) Districts. Station 23 is located in the CCD.

##### *7.6.12.2 District Regulations*

The proposed route for circuit 941 traverses both types of Overlay Airport Districts in the City of Rochester: the Inner District encompasses all land within one mile of the boundary of the Greater Rochester International Airport and all land within the approach/departure corridors of instrument equipped runways at the airport (all six of the airport’s runways are equipped with a

Category II Instrument Landing System) over an area not to exceed three miles from the end of the runway and one mile in width; the Outer District is all other land in the City. The City's regulations relating to these districts address height and other safety matters in the vicinity of Greater Rochester International Airport, and refer applicants to a process before Monroe County planning agencies. The Commission's review of the Project under PSL Article VII provides the review process that otherwise would be conducted under these regulations. Moreover, Exhibit 8 details the Applicant's intention file a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the FAA to confirm that the proposed facilities and construction activities in the vicinity of the Airport will not impact air navigation or airport operations.

Zoning regulations for the R-2 District are provided in Article IV of the zoning ordinance (§120-16 – §120-24). Public utilities are identified as Special Permit Uses (§120-18), subject to additional regulation in §120-144. Minimum frontage and minimum lot size are not applicable to non-residential uses in the R-2 District, but front yard (average front yard depth of buildings on the block or 20 feet, whichever is greater), side yard (10 feet with a combined width of both side yards of 25 feet), and rear yard (10 feet) setbacks are specified (§120-20). Bulk requirements for non-residential uses limit principal use or structure height to 35 feet (§120-21). Additional requirements for public utilities (§120-144) include: minimum setback of 25 feet from property lines (or the minimum setback requirements of the applicable zoning district, whichever is greater); such uses shall be fenced where any safety hazard is present; and no service or storage yard or building shall be permitted except as permitted for other uses in the district; noise emanating from public utility uses is limited to 66 decibels (dB) by day and 45 dB by night measured at any lot line which is also the lot line of a property in a residential or planned development zoning district, or a permitted or specially permitted residential use in any other zoning district.

Zoning regulations for the CCD are provided in Article IX of the zoning ordinance (§120-57 – §120-72). All uses are permitted in fully enclosed buildings in the CCD. The base design criteria for the CCD are provided in §120-66; Station 23 is also located within the Riverfront District, which has additional design and performance criteria (§120-67). With the exception of several overhead spans to the west of Frontier Field, circuit 941 will be located underground within the

CCD. Station 23 is fully enclosed and all improvements planned as part of the Project will be located within the existing building envelope.

Zoning regulations for the M-1 District are provided in Article XI of the zoning ordinance (§120-80 – §120-88). Public utilities are identified as Special Permit Uses (§120-83), subject to additional regulation in §120-144, as described above. Lot, area, and yard requirements (§120-84) and bulk requirements (§120-85) are not applicable for nonresidential uses in the M-1 District.

*To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the yard, setback and height requirements for the R-2 District provided in the City of Rochester zoning ordinance. For the overhead portion of circuit 941, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for circuit 941. It is not technologically feasible to comply with the City's height restriction for nonresidential uses in the R-2 District.*

#### 7.6.12.3 Temporary Uses

Article XVIII contains additional requirements for specified uses in all zoning districts. §120-149 allows temporary contractors' offices, equipment sheds, and construction staging areas for the duration of the Project.

#### 7.6.12.4 Landscaping, Buffers and Screening

§120-169 requires screening for any nonresidential use where it abuts an area zoned or used residentially on the ground floor. This section also provides various landscaping, plant specification, and ground maintenance requirements.

*To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's*

*consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. In addition, the screening requirement is impractical and contrary to industry standards and practices.*

#### 7.6.12.5 Lighting

§120-170 provides the lighting standards for uses within the City including security and service-area lighting. The proposed Project does not include any changes to the lighting provided at Station 23, and no lighting is required for circuit 941.

#### 7.6.12.6 Signs

§120-177 addresses the requirements for permanent and temporary signs within the City.

#### 7.6.12.7 Drainage

§120-178 requires site grading to be done so as to preserve or enhance topographic features and to provide positive drainage of stormwater away from structures and into public storm sewers or approved drainage channels.

### 7.7 References

County Code, Monroe County, New York. <http://www.ecode360.com/?custId=MO0860>

Town Code, Town of Chili, New York. <http://www.ecode360.com/?custId=CH0024>

Town Code, Town of Chili, New York (1986). *Design Criteria and Construction Specifications Manual*.

Town Code, Town of Gates, New York. <http://www.ecode360.com/?custId=GA0050>

Town Code, Town of Henrietta, New York. <http://www.ecode360.com/?custId=HE0056>

City Code, City of Rochester, New York. <http://www.ecode360.com/?custId=RO0104>



**Rochester Gas and Electric Corporation**  
**Rochester Area Reliability Project**

**Exhibit 7 - Tables**



**Table 7-1: Town of Chili Local Ordinance Waiver Requests**

Chapter	Description	Statutory Basis	Justification for Waiver Request
Design Criteria & Construction Specifications Manual			
§223- 1A.3.2	Requires grubbing of all tree roots.	Existing technology, needs of consumers, factors of costs and economics	These specifications have been designed primarily in support of residential and commercial development within the Town of Chili. The costs to consumers would outweigh any benefit of applying such provision to construction of the project. For the construction of transmission facilities, the removal of cleared vegetation from the proposed right-of-way may not be preferable from an environmental perspective, as greater harm to the environment may be realized as a result of efforts to remove cleared vegetation. The New York State Public Service Commission and Department of Public Service staff will be able to control the methods to be employed during project construction through review and approval of the project's Environmental Management and Construction Plan (EM&CP). As a consequence, the proposed transmission right-of-way will be prepared and restored in accordance with the provisions of the project's EM&CP which, based on previously approved EM&CP documents, may allow for the stacking of logs or burying of tree stumps within the proposed right-of-way.
§223- 1A.3.3	Requires that materials derived from clearing and grubbing be removed from site within 15 days after cutting and prohibits the burying of land clearing materials on site.		
§223- 1B	Establishes standards for materials and construction methods associated with earthwork activities.		
Flood Damage Prevention			
§277	This chapter implements the National Flood Insurance Program. The floodplains associated with Little Black Creek and the Genesee River in the town of Chili crossed by a portion of the Project comprise special flood hazard areas as	Existing technology, factors of cost or economics, needs of	To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Insomuch as the transmission structures are not

Chapter	Description	Statutory Basis	Justification for Waiver Request
	identified and defined on the flood insurance rate map for Monroe County prepared by FEMA	consumers	prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. Additionally, the Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction, resulting in increased cost and schedule delays.
§277-13F	Allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 277.		
Subdivision of Land			
§439-22	Regulates lot size and arrangement, access, and prevention of landlocked parcels.	Needs of consumers	To the extent that they are applicable to the Project, the Applicant requests that the Commission refuse to apply the regulations regarding subdivision of land. The landlocked proposed site for Station 255 would require an access road that will bisect active agricultural land to connect to a minor arterial or a local road. On the other hand, the remote location of the proposed site and the surrounding rolling topography decreases its visibility to the general public, which is considered preferable.

Chapter		Description	Statutory Basis	Justification for Waiver Request
Zoning				
Zoning: FW District				
§500-9	Contains the FW District rules and is designed to fulfill the requirements of the National Flood Insurance Program. Utility transmission lines are considered special permit uses in this district. The dimensional requirements of the FW District are a minimum lot area of five acres, lot frontage of 300 feet, and front setback of 100 feet from the road right-of-way.	Existing technology and factors of cost and economics	The Applicant requests that the Commission refuse to apply the use, dimensional, area, setback and landscaped buffer and architectural requirements detailed in the Town of Chili zoning ordinance. The costs to consumers would outweigh any benefit of applying such provision to construction of the project. Furthermore, circuits 940 and 941 in the Town of Chili will be predominantly overhead and partially underground within existing electric transmission rights-of-way and partially overhead along a railroad right-of-way; the dimensional (i.e., height), area and setback requirements that pertain to buildings and structures are not relevant to the underground portions of the proposed facilities. For the overhead portions of circuits 940 and 941, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria rather than minimum lot size. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for circuits 940 and 941. It is not technologically feasible to comply with the Town’s maximum height restrictions.	
Zoning: FPO District				
§500-10	Sets forth the rules for the FPO District and is designed to fulfill the requirements of the National Flood Insurance Program.			
Zoning: RA-10 District				
§500-11	Governs uses in the RA-10 District. Public utility buildings, structures and uses are special permit uses in this district. The dimensional requirements of the RA-10 District, subject to 75-foot setbacks from “affected major highways,” as defined below, are a minimum lot area of 10 acres, lot width of 500 feet, front yard of 100 feet, and side and rear yards of 50 feet each. The maximum building height in this district is 35 feet, except for taller farm buildings or structures on farms, provided that are at least 100 feet from every property line.			

Chapter		Description	Statutory Basis	Justification for Waiver Request
Zoning: LI District				
§500-20	Governs uses in the LI District. Public utility buildings are special permit uses in this district. The dimensional requirements of the LI District are a minimum lot of 62,500 square feet, lot width and depth of 250 feet, front yard of 60 feet (or 75 feet on “affected major highways” as defined below), side yard of 40 feet, and rear yard of 80 feet. The maximum lot coverage of structures is 40% of the total lot area, and the maximum building height is 50 feet. If the use is located adjacent to another district (except the GI District), a full length landscaped 100 foot buffer is required. The architectural treatment and general appearance of all buildings and grounds must be in keeping with the purpose of the LI District and must be a visual asset.			
Zoning: GI District				
§500-21	Governs uses in the GI District. Public Utility buildings are permitted outright in this district. The dimensional requirements of the GI District are a minimum lot area of 50,000 square feet, lot width and depth of 250 feet, front yard of 50 feet (or 75 feet on “affected major highways” as defined below), side yard of 35 feet, and rear yard of 40 feet. The maximum lot coverage of structures is 50% of the total lot area, and the maximum building height is 50 feet. If the use is located adjacent to another district (except the LI District), a full length landscaped buffer of 100 feet in width is required. The architectural treatment and general appearance of all			

Chapter	Description	Statutory Basis	Justification for Waiver Request
	buildings and grounds must be in keeping with the purpose of the GI District and must be a visual asset.		
<i>Zoning: AC District</i>			
§500-27	Governs the AC District. Public utility buildings, structures and uses – but not including “...power plants and similar uses” – are special permit uses in this district. Dimensional requirements in the AC District, including lot width and depth, setbacks and maximum lot coverage, are specified for single family residences, farms, and forest or wildlife preserves; these requirements are not applicable to the Project. Notwithstanding the minimum lot sizes set forth for the AC District, increased lot sizes may be required if the developed site is not served with public sanitary sewer facilities. The maximum building height in the AC District is the lesser of two stories or 35 feet.	Existing technology and factors of cost and economics	The partial rebuild of circuit 906 will be entirely overhead along a railroad right-of-way in the AC District in the Town of Chili. Circuit 40 will be entirely overhead along the southern edge of the NYPA right-of-way in the AC District. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal structure height for the partial rebuild of circuit 906 is 68 to 70 feet, and the optimal structure height for circuit 40 is 100 feet. It is not technologically feasible to comply with the Town’s maximum height restriction of 35 feet for the AC District. Assuming the proposed Station 255 meets the definition of a public utility use that is subject to a special use permit in the AC District, the need for a special use permit for the Project is preempted by PSL Section 130; therefore, the Applicant will not seek a special use permit from the Zoning Board of Appeals for Station 255. Alternatively, if Station 255 were considered a “similar use” to a “power plant,” §500-27 could be interpreted as prohibiting the construction of Station 255 in the AC District. To the extent §500-27 could be so interpreted, the Applicant requests that the Commission refuse to apply that provision as being unduly

Chapter	Description	Statutory Basis	Justification for Waiver Request
			restrictive. The Applicant has determined, based on NESC criteria and prudent engineering considerations, that the height of certain bus work and support structures at Station 255 will range between 85 feet and 100 feet, and it is not technologically feasible to comply with the Town's maximum height restriction of 35 feet in the AC District.
<i>Zoning: Fences, Walls, Hedges and Screen Plantings</i>			
§500-54	Governs fences, walls, hedges and screen planting, and provides criteria, requirements and limitations regarding the location and height of such appurtenances. No fence shall be constructed of barbed wire or be electrified unless said fence is on a farm.	Existing technology and needs of consumers	To the extent that these requirements and limitations are inconsistent with the security requirements of Station 255, the Applicant requests that the Commission refuse to apply the local provisions regarding the type and location of fences. The proposed site for Station 255 is somewhat isolated from local roads and public areas and because this facility will be critical energy infrastructure, security requirements will dictate the position, type and materials for the security fence. The Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards, and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.



Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Zoning: General Restrictions</i>			
§500-61	Provides a number of general restrictions regarding the development and use of property in the Town of Chili: Lots must abut a street for at least 40 feet, subject to the exceptions for flag lots (Subsection A); yards must be graded with a minimum 2% slope (Subsection B). Temporary buildings, trailers, equipment and materials used during construction are permitted during while work is in progress but must be removed upon completion of the construction work (Subsection E). Land may not be used in any way which creates an objectionable condition, including noise or electrical disturbance (Subsection F); fill permits and tree removal permits are required before any fill activities above existing grade and tree removal in wooded or conservation areas (Subsection H); flag lots are subject to the approval of the Planning Board and must include an access way with a minimum width of 40 feet (Subsection K).	Existing technology and factors of cost and economics	The Applicant requests that the Commission refuse to apply the local requirements because they are subject to interpretation and potentially unduly restrictive. Furthermore, this request cannot be obviated by design changes to the Project. The Project will be designed and constructed to ensure that the Commission's guidelines regarding electric and magnetic field effects are met. The Applicant will also implement noise mitigation measures at Station 255 to minimize potential noise levels at adjacent properties. The Applicant could incur considerable additional cost if it were required by the Planning Board to achieve unreasonable reductions in the Project's noise or electric and magnetic field levels. These costs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.

**Table 7-2: Town of Gates Local Ordinance Waiver Requests**

Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Flood Damage Prevention</i>			
§100	This chapter implements the National Flood Insurance Program. (These provisions are substantially duplicated in Article XVIII of this Town's zoning ordinance.) The floodplains associated with Little Black Creek in the Town of Gates crossed by a portion of the Project comprise a special flood hazard area as identified and defined on the flood insurance rate map for Monroe County prepared by FEMA.	Existing technology, factors of cost or economics, needs of consumers	To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Inasmuch as the transmission structures are not prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. Additionally, the Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction, resulting in increased cost and schedule delays.
§100-13F	Allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 100.		

Chapter	Description	Statutory Basis	Justification for Waiver Request
Zoning			
Zoning: Buffers and Screen Plantings			
§190-34	Requires a buffer area on any lot within a GB, LI or GI District containing screen plantings of trees, hedges, shrubs of at least 100 feet wide along the boundary of any R District.	Existing technology, needs of consumers	The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards, and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. In addition, this buffer and screen planting requirement is impractical and contrary to industry standards and practices in the area between Station 418 and the adjacent electric transmission right-of-way.
Zoning: FW District			
§190-66	The Project facilities are not expressly included among the permitted uses.		
Zoning: FPO District			
§190-87	The Project facilities are not expressly included among the permitted uses		
Zoning: R-1 District			
§190-94	In the R-1-11 District, front setbacks are required to be no less than 50 feet along state and county roads and no less than 35 feet along all other roads. The minimum lot area is 11,000 square feet. The minimum lot width is 80 feet, with a maximum depth-to-width ratio of 2.5 to 1. The minimum side yard setback is the lesser of (i) 10% of the required lot width at the front setback line, or (ii) 10 feet, but in no event may any side yard be less than 6 feet. The minimum rear yard setback is 30 feet. The maximum height of a principal structure is 35 feet and an accessory structure is 15 feet.	Existing technology; factors of cost or economics	Circuit 940 in the Town of Gates will be entirely underground within an existing electric transmission right-of-way; as such, the dimensional (i.e., height), area and setback requirements that pertain to structures are not relevant to this proposed facility. The costs to consumers would outweigh any benefit of applying such provision.

Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Zoning: GB District</i>			
§190-144	The dimensional requirements for GB Districts are as follows: When adjacent to Residential, Multiple Residential and Neighborhood Business and/or Business, Non-Retail Districts, there shall be a minimum setback distance equal to the height of the tallest structure closest to that district boundary on the GB site plus a 100-foot buffer area. Front setbacks must be no less than 100 feet and no parking is permitted in the 50 feet nearest a state or county road. Side and/or rear yard setback shall be equal to the height of the tallest structure on either lot or 25 feet, whichever is greater. The depth to width ratio shall not exceed 3 to 1. Principal structures shall not exceed 40 feet and accessory structures shall not exceed 20 feet in height	Existing technology; factors of cost or economics	Circuit 940 in the Town of Gates will be entirely underground within an existing electric transmission right-of-way; as such, the dimensional (i.e., height), area and setback requirements that pertain to structures are not relevant to this proposed facility. The costs to consumers would outweigh any benefit of applying such provision.

Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Zoning: LI District</i>			
§190-152	The dimensional requirements for LI Districts are as follows: Front setbacks on a state or county road shall be no less than 100 feet, except that, when adjacent to any Residential District and/or Neighborhood Business District, a minimum setback is required equal to the height of the tallest structure closest to that district boundary on the LI site, plus a 100 foot buffer. Side and rear setbacks must be equal to the height of the tallest structure on either lot or 30 feet, whichever is greater. The depth to width ratio shall not exceed 3 to 1. Structures shall not exceed 50 feet in height.	Existing technology; factors of cost or economics	Circuit 940 in the Town of Gates will be entirely underground within an existing electric transmission right-of-way; as such, the dimensional (i.e., height), area and setback that pertain to structures are not relevant to this proposed facility. The costs to consumers would outweigh any benefit of applying such provision.
<i>Zoning: LI District</i>			
§190-157	Provides that noise generated by uses in the LI District be no more audible than the noise emanating from the ordinary street traffic and from other commercial or industrial uses, except that in no event shall it be necessary to reduce the noise to below 65 decibels in residential or business non-retail districts, or to below 70 decibels as measured from adjacent property in a neighborhood and/or light and general industrial district.	Existing technology; factors of cost and economics	Noise is unavoidable given the nature of the proposed construction activities. Activities to be conducted in the course of construction, including vegetation clearing by motorized equipment, excavation, and erection of structures make compliance technically impossible or impracticable. The Applicant will implement noise mitigation measures during the course of the proposed Project; these measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable.
<i>Zoning: GI District</i>			
§190-161	The dimensional requirements for GI Districts are as follows: When adjacent to Residential, Multiple Residential and Neighborhood Business Districts, there shall be a minimum	Existing technology and factors of cost	Circuit 941 in the Town of Gates will be partially underground within an existing electric transmission right-of-way and partially overhead along a railroad right-of-

Chapter	Description	Statutory Basis	Justification for Waiver Request
	<p>setback distance equal to the height of the tallest structure closest to that district boundary on the GI site plus a 100-foot required buffer area. Front setbacks must be no less than 100 feet and no parking is permitted in the 50 feet nearest a state or county road. Side and rear yard setbacks shall be equal to the height of the tallest structure on either lot or 40 feet, whichever is greater. The depth to width ratio shall not exceed 4 to 1. Structures shall not exceed 50 feet.</p>	<p>and economics</p>	<p>way. The zoning requirements that pertain to structures are not relevant to the proposed underground portion of circuit 941. For the overhead portion of circuit 941, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria rather than minimum lot size. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for circuit 941. Given the current design standards and technology for overhead 115 kV transmission lines, it is not feasible to comply with the Town's maximum height restrictions.</p> <p>Station 418 is a permitted use in the GI District in which it is located, and the proposed improvements at this station will comply with the 50-foot height limitation in this district. However, Station 418 is by necessity situated adjacent to the existing electric transmission right-of-way, which is within an R-1-11 District in this location. The setback and buffer requirements between the substation (GI District) and adjacent electric transmission right-of-way (R-1-11 District) are not warranted and contrary to accepted engineering practice since they would only serve to further separate two utility uses (i.e., the transmission facility and the interconnected substation). Compliance with these requirements would increase the land requirements for Station 418, require relocation</p>

Chapter	Description	Statutory Basis	Justification for Waiver Request
			of the existing station, and increase the cost of the project without any corresponding benefit to area residents and ratepayers.
<i>Zoning: GI District/Noise</i>			
§190-166	Provides that objectionable noise to any land adjacent to the site is prohibited in the GI District.	Existing technology and factors of cost and economics	Noise is unavoidable given the nature of the proposed construction activities. Activities to be conducted in the course of construction, including motorized equipment engaged in vegetation clearing, excavation and erection of structures make compliance technically impossible or impracticable. The Applicant will implement noise mitigation measures during the course of the proposed Project; these measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The sound levels generated by the equipment at Station 418 have not been characterized as “objectionable,” and the proposed improvements to accommodate circuit 940 will not change the sound levels at this station; therefore, Project operations are expected to remain in compliance with this local ordinance.

**Table 7-3: Town of Henrietta Local Ordinance Waiver Requests**

Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Brush, Grass and Weeds</i>			
§43-3	Grants permission to the Town Board to, by resolution, require a property owner to cut, trim or remove brush, grass or weeds, or to spray with herbicides, and cut, trim, remove or destroy poisonous shrubs or weeds.	Needs of consumers	To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive in view of the Commission's reliability criteria and the needs of the Applicant's consumers. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards, and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.
§43-4	Allows the Town Board to specify the place, manner and time when this work must occur.		



Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Building &amp; Development</i>			
§48-14	Allows the Fire Marshall or Building Inspector to issue a stop work order if there is reasonable grounds to believe that work on any building or structure is being performed in violation of the provisions of the applicable building laws, ordinances or regulations, if the work is not in conformity with the provisions of an application, plans or specifications on the basis of which a building permit was issued, or if the work is being performed in an unsafe and dangerous manner.	Factors of cost and economics	The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued to the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction, resulting in increased cost and schedule delays. The costs to consumers associated with allowing this ordinance to be applied outweigh any benefit from its application.
<i>Flood Damage Prevention</i>			
§125	This chapter implements the National Flood Insurance Program. §125-12F allows for issuance of stop work orders by Town representatives for work within flood hazard areas without a permit or not in compliance with the requirements of Chapter 125.	Existing technology, factors of cost and economics, and needs of consumers	To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the provisions of the local flood damage prevention ordinance. Inasmuch as the transmission structures are not prone to flood damage, will not increase flood heights or alter floodplains, and will not increase flood hazards to other property, these provisions are unreasonably restrictive in view of existing technology. The Applicant requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive. Additionally, the New

Chapter	Description	Statutory Basis	Justification for Waiver Request
			York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public Need issued for the project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction, resulting in increased cost and schedule delays with no benefit to the citizens of the municipality.
<b>Property Maintenance</b>			
§205-5	Requires (a) the provision of adequate site drainage to prevent the development of stagnant ponds; (b) maintenance of: fences and other minor construction in safe and substantial condition; (c) maintenance of steps, walks, driveways, and similar paved areas so as to afford safe passage under normal use and weather conditions; (d) premises be kept clear of physical hazards, rodent harborage and infestation; and, (e) elimination of heavy undergrowth and accumulations of noxious plant growth. Ground cover shall not exceed six inches in height.	Existing technology and needs of consumers	To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements regarding undergrowth and height of ground cover, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards, and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements to the extent that they conflict with Commission-

Chapter	Description	Statutory Basis	Justification for Waiver Request
			approved vegetation management practices.
<i>Stormwater Management</i>			
§236-8	Prohibits discharging any materials into the municipal storm drain system or waters of the United States.	Factors of cost and economics and needs of consumers	The Applicant will seek coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-10-001) and apply for a Water Quality Certificate under the Federal Clean Water Act as part of the PSL Article VII certification process. The Project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control requirements under the SPDES permit in accordance with ECL Article 17, and because the project is a PSL Article VII project, a separate SWPPP will not be required. Refer to Exhibits 4 and 8 for details. RG&E will not seek separate approval of the stormwater plan from the Town. The Applicant also requests that the Commission refuse to apply the local stop work order provisions because they are unduly restrictive in view of cost factors and the needs of consumers. The New York State Public Service Commission and the New York State Department of Public Service staff will be responsible for ensuring that construction activities are being performed in accordance with the conditions and requirements of the Certificate of Environmental Compatibility and Public
§236-12	The Town will adopt best management practices for any activity that may contribute to stormwater contamination.		
§§236-15 through 236-24	Establishes the Town's program for regulation of stormwater management including erosion and sediment control for land disturbance and construction activities.		
§§236-25 through 236-35	Sets forth the requirements for the design and management of post-construction stormwater pollution prevention measures.		
§236-36	Allows the Fire Marshall or Building Inspector to issue a stop work order if reasonable grounds exist to believe that work on any site is proceeding in violation of the provisions of any applicable law, code, ordinance or regulation, or if the work is being performed in an unsafe and dangerous manner.		

Chapter	Description	Statutory Basis	Justification for Waiver Request
			Need issued to the Project and subsequent compliance filings. Local stop work authority has the potential to disrupt construction, resulting in increased cost and schedule delays.
Zoning			
Zoning: Residential Districts			
§295-6	Establishes “as-of-right” and specially permitted uses within R-1 zoning districts and does not preface public utility uses.	Existing technology and factors of cost and economics	To the extent Chapter 295 would prohibit utility uses or structures in an I District or in an R-1-15 District, the Applicant requests that the Commission refuse to apply such prohibition as being unduly restrictive. In addition, to the extent that they are applicable to the proposed Project, the Applicant also requests that the Commission refuse to apply the yard, setback and height requirements for the R-1-15 District and the Industrial District prescribed in Chapter 295. For circuit 40, the individual structure locations will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 80 to 100 feet for the structures for circuit 40. It is not technologically feasible to comply with the Town’s height restrictions in the R-1-15 and Industrial Districts. In addition, the Applicant requests that the Commission
§295-7	States “no structure in a residential district shall exceed two stories of any kind above the basement,” and establishes a maximum height requirement of 35 feet within residential zoning districts. This height requirement can be exceeded by special permit.		
§295-9	Establishes minimum lot sizes, dimensions, and setbacks.		
Zoning: Industrial Districts			
§§295-24 & 25	Establish “as-of-right” permitted uses and prohibited uses, respectively, within the Industrial zoning district. While public utility uses are not expressly referenced, §295-24 could be interpreted as allowing such uses by special permit.		
§295-26	Establishes a maximum height requirement of 40 feet within the Industrial District. This height requirement can be exceeded by special permit.		
§295-27D	Requires a 50-foot buffer zone along industrial property lines that abut residential property to provide visual and sound barriers.		

Chapter	Description	Statutory Basis	Justification for Waiver Request
			refuse to apply the buffer zone requirements for the Industrial District; compliance with these requirements would increase the land requirements for the circuit 40 right-of-way and increase the cost of the project without any corresponding benefit to area residents and ratepayers.

**Table 7-4: City of Rochester Local Ordinance Waiver Requests**

Chapter	Description	Statutory Basis	Justification for Waiver Request
<i>Noise</i>			
§75-7	Prohibits sounding any horn or signaling device on any vehicle, except as a danger warning.	Existing technology and factors of cost and economics	<p>Construction activities on the Project will generally be scheduled to occur between the hours of 7:00 a.m. and 6:00 p.m. six days per week (Monday through Saturday). Considering the need for excavation and underground construction near Station 23 in downtown Rochester, construction activities in that area could be scheduled to occur on Sundays to minimize traffic impacts.</p> <p>The Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive. Furthermore, this request cannot be obviated by design changes to the Project because noise is unavoidable given the nature of such construction activities. A number of the processes and activities to be conducted in the course of construction, including motorized equipment engaged in vegetation clearing, excavation, and erection of structures make compliance technically impossible or impracticable. The Applicant will implement noise mitigation measures during the course of the proposed Project; these measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. Moreover, the Applicant would incur considerable additional cost if it were required to achieve full compliance with the local requirements applicable in this municipality by further adjusting the Project's noise levels. These</p>
§75-9	Prohibits operating any motor vehicle in a manner that the sound level emitted therefrom exceeds 80 dB(A) either (a) at a distance of 25 feet or more from the path of the vehicle when operated on a public street or other public place, or (b) at or beyond the property line when operated on private property.		
§75-11	Prohibits creating any noise on any street or other public place, or on private property adjacent to any school, institution of learning, church or court while the same is in use, or adjacent to any hospital, nursing home or home for the aged, if the noise unreasonably interferes with the working of such school, institution of learning, church or court or disturbs or annoys patients in a hospital, nursing home or home for the aged.		
§75-13	Prohibits excessive noise when loading or unloading any vehicle.		

Chapter	Description	Statutory Basis	Justification for Waiver Request
			costs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements.
<i>Trees</i>			
§89-9	Prohibits cutting down any tree in a public street or place, cutting any branch of such a tree, trimming any branch of such a tree, pruning or spraying a tree, or attaching any wire to a tree, and prohibits injuring any tree in a public street or place, or attaching or hanging anything on such a tree. It also requires that tree trimming by an electric utility be limited by actual necessities, and be done in a neat and workmanlike manner with a saw, and not an axe or hatchet. Provides that in doing any work on the surface or below the surface of a street, suitable guards be placed around all nearby trees in or on any highway, park or other public property to prevent injury to such trees; such additional precautions as may be required shall be taken to prevent damage to trees.	Existing technology and needs of consumers	To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards and Commission precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. In addition, the tree trimming "necessities" are established by NERC reliability standards as implemented by RG&E under the vegetation management program approved by the PSC.
<i>Zoning</i>			
<i>Zoning: R-2 District</i>			
§120-16 to §120-24	Zoning regulations for the R-2 District are provided in Article IV of the zoning ordinance	Existing technology and factors of cost and economics	To the extent that they are applicable to the proposed Project, the Applicant requests that the Commission refuse to apply the yard, setback, and height requirements for the R-2 District provided in the City of Rochester zoning ordinance. For the overhead portion of circuit 941, the individual structure locations
§120-18	Public utilities are identified as Special Permit Uses.		
§120-20	Minimum frontage and minimum lot size are not applicable to non-residential uses in the R-2 District, but front yard (average front yard depth		

Chapter	Description	Statutory Basis	Justification for Waiver Request
	of buildings on the block or 20 feet, whichever is greater), side yard (10 feet with a combined width of both side yards of 25 feet) and rear yard (10 feet) setbacks are specified.		will be a function of the optimal span length regardless of setback requirements, and the size and configuration of any necessary easements will be based on required clearance and reliability criteria. In addition, the Applicant has determined, based on NESC criteria and prudent engineering considerations, that the optimal height is 68 to 70 feet for the structures for circuit 941. It is not technologically feasible to comply with the City's height restriction for nonresidential uses in the R-2 District.
§120-21	Bulk requirements for non-residential uses limit principal use or structure height to 35 feet.		
§120-144	Additional requirements for public utilities include: minimum setback of 25 feet from property lines (or the minimum setback requirements of the applicable zoning district, whichever is greater); such uses shall be fenced where any safety hazard is present; and no service or storage yard or building shall be permitted except as permitted for other uses in the district; noise emanating from public utility uses is limited to 66 decibels (dB) by day and 45 dB by night measured at any lot line which is also the lot line of property in a residential or planned development zoning district, or a permitted or specially permitted residential use in any other zoning district.		
Zoning: Landscaping, Buffers and Screening			
§120-169	Requires screening for any nonresidential use where it abuts an area zoned or used residentially on the ground floor. This section also provides various landscaping, plant specification, and ground maintenance requirements. To the extent the Applicant's clearing procedures or their vegetation management programs are consistent with these local requirements, the Applicant will comply with the substantive provisions of this section.	Existing technology and needs of consumers	To the extent that the Applicant's vegetation management procedures or practices are inconsistent with these local requirements, the Applicant requests that the Commission refuse to apply the local requirements because they are unduly restrictive. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain it safely and reliably pursuant to procedures that are based on state law, reliability standards, and Commission



Chapter	Description	Statutory Basis	Justification for Waiver Request
			precedent. These consumer needs outweigh the impact on this municipality that would result from the Commission's refusal to apply these local requirements. In addition, the screening requirement is impractical and contrary to industry standards and practices.



# **Rochester Gas and Electric Rochester Area Reliability Project**

## **Exhibit 7 – Figures**

