

Danielle E. Mettler-LaFeir  
Partner

September 23, 2022

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Danny Condella, Mayor  
Village of Penn Yan  
111 Elm Street  
P.O. Box 426  
Penn Yan, New York 14527

Re: Environmental Easement Notice

Dear Mayor Condella:

Attached please find a copy of an environmental easement granted to the New York State Department of Environmental Conservation ("Department")

on August 25, 2022  
by New York State Electric & Gas Corporation,  
for property located between Water Street and the Keuka Lake Outlet Penn Yan, New York,  
Tax Map Nos. 049.75-1-56, 049.75-1-55  
DEC Site No: 862009.

This Environmental Easement restricts future use of the above-referenced property to restricted-residential, commercial or industrial use. Any on-site activity must be done in accordance with the Environmental Easement and the Site Management Plan which is incorporated into the Environmental Easement.

Article 71, Section 71-3607 of the New York State Environmental Conservation Law requires that:

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.
2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such

Mayor Condella  
September 23, 2022  
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easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of every environmental easement that has been accepted by the Department is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with these provisions of New York State Environmental Conservation Law. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

*Danielle E. Mettler-LaFeir*

Danielle E. Mettler-LaFeir  
Barclay Damon LLP

Enclosures

ecc: G. Pratt (NYSDEC)  
J. Ruspantini (NYSEG)

YATES – STATE OF NEW YORK  
LOIS E. HALL, COUNTY CLERK  
417 LIBERTY ST, SUITE 1107, PENN YAN, NEW YORK 14527



COUNTY CLERK'S RECORDING PAGE  
\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\*



INSTRUMENT #: 2022-9673

Receipt#: 199986  
Clerk: KW  
Rec Date: 09/19/2022 02:03:05 PM  
Doc Grp: RP  
Descrip: EASEMENT  
Num Pgs: 10  
Rec'd Frm: BARCLAY & DAMON

Party1: NYS ELECTRIC & GAS  
Party2: NYS DEPARTMENT OF ENVIROMENTAL  
CONSERVATION  
Town: MILO

Recording:

|                           |       |
|---------------------------|-------|
| Cover Page                | 5.00  |
| Recording Fee             | 65.00 |
| Cultural Ed               | 14.25 |
| Records Management - Coun | 1.00  |
| Records Management - Stat | 4.75  |
| TP584                     | 5.00  |

Sub Total: 95.00

|                      |      |
|----------------------|------|
| Transfer Tax         |      |
| Transfer Tax - State | 0.00 |

Sub Total: 0.00

Total: 95.00

\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

\*\*\*\*\* Transfer Tax \*\*\*\*\*

Transfer Tax #: 157

Transfer Tax

Consideration: 0.00

Total: 0.00

WARNING\*\*\*

\*\*\* Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a (5) & 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

*Lois E. Hall*

Lois E. Hall  
Yates County Clerk

Record and Return To:

BARCLAY & DAMON  
FIVE STAR BANK PLAZA  
100 CHESTNUT STREET  
STE 2000  
ROCHESTER NY 14604-9959

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 25<sup>th</sup> day of August, 2022<sup>✓</sup> between Owner, New York State Electric & Gas Corporation, having an office at 89 East Avenue, County of Monroe, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located on Water Street near the Corner of Liberty Street in the Village of Penn Yan, County of Yates and State of New York, known and designated on the tax map of the County Clerk of Yates as tax map parcel numbers: 049.75-1-55 and 049.75-1-56 B, being the same as , or a portion of, that property conveyed to Grantor by the following deeds:

- Deed dated July 1, 1899 and recorded in the Yates County Clerk's Office at Liber 91, Page 88; and
- Deed dated November 1, 1990 and recorded in the Yates County Clerk's Office at Liber 369, Page 327.

The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 0.889 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 19, 2020 prepared by James S. Thew of Thew Associates Land Surveyors,

which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: D0-0002-9309, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),  
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial  
as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Yates County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be

performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:  
(i) are in-place;  
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee

interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 862009  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:                                      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

New York State Electric & Gas Corporation:

By: Steven Mullin

Print Name: Steven Mullin

Title: Director Env. Remediation Date: 08/17/2022

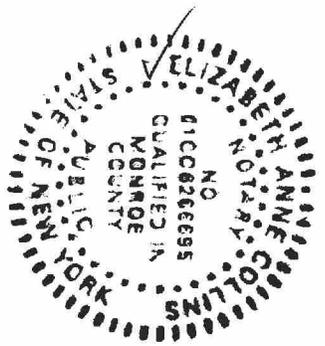
Grantor's Acknowledgment

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF MONROE )

On the 17th day of August, in the year 2022, before me, the undersigned, personally appeared Steven Mullin  personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Elizabeth Anne Collins  
Notary Public - State of New York

My commission expires August 6, 2024.





**SCHEDULE "A" PROPERTY DESCRIPTION** ✓

METES AND BOUNDS DESCRIPTION (AS MEASURED)  
NEW YORK STATE ELECTRIC & GAS CORPORATION  
PENN YAN WATER STREET  
(NEAR THE CORNER OF LIBERTY STREET)  
INCLUDES TAX MAP PARCELS 049.75-1-55 & 049.75-1-56

*Contains: 38,725 square feet or 0.889 acres*

All that tract or parcel of land situate in the Village of Penn Yan, County of Yates, State of New York, and being more precisely described as follows:

**Beginning** at a 5/8-inch rebar with a 1 1/4-inch diameter red plastic cap marked "THEW ASSOCIATES - UTICA NY" (herein after referred to as a 5/8-inch rebar) set on the southerly bounds of Water Street (50-foot width) at the northwesterly corner of a parcel of land conveyed by the Raymond B. Spencer and Sandra C. Spencer to the Village of Penn Yan by deed dated June 7, 2017 and recorded in the Yates County Clerk's Office on July 6, 2017 in Volume 721 of Deeds at Page 252, said rebar having New York State Plane Coordinates (NAD 83/2011 - Central Zone) of 969,131.09 feet North and 693,407.83 feet East;

thence South 41 degrees 11 minutes 35 seconds East, along the westerly line of the Village of Penn Yan, a distance of 198.38 feet, more or less, to the northerly shoreline of Keuka Lake Outlet; said course passing over 5/8-inch rebar set at the top bank at a distance of 180.59 feet;

thence westerly along the northerly shoreline of the Keuka Lake Outlet, as it winds and turns, a distance of 210 feet, more or less, to a point (chord South 54 degrees 46 minutes 04 seconds West, 208.70 feet); thence North 35 degrees 39 minutes 42 seconds West, in part along the westerly line of a parcel of land conveyed by Cindy B. Rosato to Rei Rei, LLC by deed dated February 24, 2011 and recorded in the Yates County Clerk's Office on March 3, 2011 in Volume 626 of Deeds at Page 116, a distance of 185.26 feet to a MAG Nail set on the southerly bounds of Water Street; said course passing over 5/8-inch rebar set at the top of bank at a distance of 20 feet;

thence along the southerly bounds of said Water Street, the following two courses and distances:

1. North 53 degrees 42 minutes 58 seconds East a distance of 175.20 feet to a set 5/8-inch rebar, said course passing over a 1/2-inch iron pipe (0.2 feet below grade) found at a distance of 163.15 feet;
2. North 43 degrees 53 minutes 31 seconds East a distance of 15.21 feet to the **Point of Beginning**; said course passing over a 5/8-inch rebar set at a distance of 8.06 feet;

To contain 38,725 square feet or 0.889 acres of land, more or less.

The above-described parcel of land is intended to be the same premises conveyed by William A. Rohrer to New York State Electric & Gas Corporation by deed dated November 1, 1990 and recorded in the Yates County Clerk's Office on November 5, 1990 in Volume 369 of Deeds at Page 327 and a portion of the same premises conveyed by Mary A. Conklin to The Penn Yan Gas Light Company by deed dated July 1, 1899 and recorded in the Yates County Clerk's Office on July 5, 1899 in Volume 91 of Deeds at Page 88.