

PSC No: 16 - Gas  
Rochester Gas and Electric Corporation  
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Issued under the authority of the PSC in Case Nos. 02-E-0198 and 02-G-0199, issued and effective March 7, 2003

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## GENERAL INFORMATION

### 10. GENERAL RETAIL ACCESS - MULTI-RETAILER MODEL (Cont'd)

#### **2. Limitation on Liability:**

RG&E will endeavor at all times to provide regular and uninterrupted service to the ESCO, its Customers, or a DC, as applicable, but in case the service shall be interrupted or irregular or defective or shall fail, from causes beyond the control of RG&E (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by State or Federal officers, commissions, boards, or bodies having jurisdiction) or because of the ordinary negligence of RG&E or its employees, servants or agents, RG&E shall not be liable to the ESCO, its Customers, or a DC, as applicable, therefor. In addition, the Company reserves the right to curtail or interrupt service as provided in this Tariff.

Compliance with directives of the upstream pipelines shall, without limitation by reason of specification, constitute a circumstance beyond the control of RG&E for which RG&E shall not be liable; provided, however, that RG&E shall not be absolved from any liability to which it may otherwise be subject for gross negligence or intentional wrongdoing in the manner in which it carries out the upstream pipeline's or Company's OFO.

Without limiting the generality of the foregoing, RG&E may, without liability therefor, interrupt, reduce or impair service to any ESCO, its Customers, or the DC, in the event of an emergency threatening the integrity of RG&E's system, or any other systems with which it is directly or indirectly interconnected, if in RG&E's sole judgment such action will prevent, alleviate or reduce the emergency condition, for such period of time as RG&E deems necessary.

ESCOs serving Customers who require service which is uninterrupted, unreduced or unimpaired on a continuous basis should ensure that the Customers provide their own emergency or back-up capability.

RG&E shall not be liable for any special, incidental, indirect, exemplary, punitive or consequential damages, including, but not limited to, lost profits, purchased power costs, or amounts owed by a DC or a Customer to its ESCO, suffered by an ESCO, its Customers, or a DC or to any other persons or entities caused by, arising from or related to the performance of or failure to perform any of the services or obligations of RG&E under General Retail Access as set forth in RG&E's tariff or the GTOP Manual, even if RG&E has been advised of the possibility of such damages.

#### **3. Force Majeure:**

RG&E and the ESCO/DC shall use due diligence in performing their obligations under this Tariff. Neither party shall be liable to the other in damages for any act, omission, occurrence, failure or delay of performance, damage, loss, injury or expense caused by any act of God, strike, lockout, act of the public enemy, act of terror, insurrection, civil unrest, war, blockade, riot, epidemic, landslide, extraordinary lightning, earthquake, fire, volcanic activity, extraordinary storm, flood, washout, explosion, accidental damage to or destruction of transmission or distribution facilities, equipment or machinery or electric lines or wires, or the seizure or appropriation of facilities or electricity or gas by any governmental authority of competent jurisdiction or any other binding order of any court or public authority that the party has resisted by all reasonable legal means, or any other cause not reasonably within the control of the party asserting force majeure, and which such party is unable by the exercise of due diligence to avoid, prevent or overcome. A party's failure to avert or to settle a strike or other labor dispute shall not be deemed, within the meaning of this Rule, a matter reasonably within that party's control. Financial loss or other economic hardship shall in no event constitute force majeure hereunder.

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