

BEFORE THE  
NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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Petition Requesting Initiation of a Proceeding to :  
Examine a Proposal for Continued Operation of :  
the R.E. Ginna Nuclear Power Plant, LLC. :

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Case 14-E-0270

**ROCHESTER GAS AND ELECTRIC CORPORATION'S RESPONSE TO ORDER  
DIRECTING NEGOTIATION OF A RELIABILITY SUPPORT SERVICE  
AGREEMENT AND PETITION FOR APPROVAL OF COST ALLOCATION AND  
COST RECOVERY SURCHARGE MECHANISM**

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February 13, 2015

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**I. INTRODUCTION**

Rochester Gas and Electric Corporation (“RG&E” or the “Company”) submits this Response to the Order Directing Negotiation of a Reliability Support Service Agreement and Making Related Findings issued on November 14, 2014 (“November Order”) by the New York State Public Service Commission (“Commission”) in the above-referenced matter. Pursuant to Ordering Clause 1 of the November Order, attached hereto as Exhibit A is an executed Reliability Support Services Agreement (“RSSA”) between RG&E and R.E. Ginna Nuclear Power Plant, LLC (“GNPP,” and together with RG&E, the “Parties”).<sup>1</sup> As discussed in more detail below, RG&E respectfully requests that the Commission: 1) accept the attached RSSA without modification; and 2) approve full and immediate cost recovery by RG&E from its customers of all amounts payable to GNPP under the RSSA utilizing the cost recovery surcharge mechanism proposed herein.<sup>2</sup>

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<sup>1</sup> Contemporaneous with this filing, GNPP is submitting the RSSA to the Federal Energy Regulatory Commission (“FERC”) and requesting that FERC accept the RSSA as GNPP’s Electric Rate Schedule FERC No. 1 effective April 1, 2015, as agreed to by the Parties, without suspension, hearing or settlement judge proceedings.

<sup>2</sup> As indicated in Section III below, while the Parties have executed the attached RSSA, various conditions to payment obligations exist.

## II. BACKGROUND

GNPP, which is a subsidiary of Constellation Energy Nuclear Group, LLC (“CENG”), owns and operates the R.E. Ginna Nuclear Power Plant (“Ginna Facility”), a 581 MW single-unit pressurized water reactor located in Ontario, New York.<sup>3</sup> In 2004, the Ginna Facility’s license to operate was extended until September 2029.<sup>4</sup> Prior to expiration in June 2014, GNPP sold a majority of the Ginna Facility’s output to RG&E under a power purchase agreement (“PPA”). Since then, the Ginna Facility has continued to operate as a merchant generator selling into the wholesale markets operated by the New York Independent System Operator (“NYISO”). On a forward-looking basis, CENG’s “management determined that the expected revenues from the Ginna Facility’s sale of capacity and energy into the NYISO markets [would] not be sufficient to cover its costs of continued operation....”<sup>5</sup> As a result, in January 2014, “CENG management representatives met separately with individual Commissioners, Department of Public Service Staff, RG&E and the NYISO” to inform them that “the Ginna Facility’s retirement was under consideration by CENG management.”<sup>6</sup>

CENG’s management informed RG&E that if it was determined that the Ginna Facility was required to support electric system reliability in RG&E’s service territory, CENG’s management was willing to continue operating the Ginna Facility upon implementation of an acceptable RSSA.<sup>7</sup>

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<sup>3</sup> Case 14-E-0270 – Petition Requesting Initiation of a Proceeding to Examine a Proposal for Continued Operation of the R.E. Ginna Nuclear Power Plant, LLC, Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R.E. Ginna Nuclear Power Plant, at 1 and 3 (July 11, 2014) (“Petition”).

<sup>4</sup> Id. at 3.

<sup>5</sup> Id. at 1.

<sup>6</sup> Id. at 1-2.

<sup>7</sup> Id. at 2.

On February 21, 2014, GNPP, RG&E and the NYISO entered into a Reliability Study Agreement to assess the potential reliability impacts of retiring the Facility. On May 12, 2014, the NYISO produced the 2014 Reliability Study, confirming that the Ginna Facility's retirement would result in bulk transmission and non-bulk local distribution system reliability violations in 2015 and 2018.<sup>8</sup>

On July 11, 2014, GNPP filed a petition requesting that the Commission initiate a proceeding to examine a proposal for the continued operation of the Ginna Facility.<sup>9</sup> Ginna asserted that “[i]n the two preceding calendar years (i.e., 2012 and 2013), CENG has sustained cumulative losses at the Ginna Facility of nearly \$100 million (including the allocation of CENG corporate overhead)” and that “CENG has not been compensated for any operational risk or an appropriate return on its investment over this period.”<sup>10</sup> Based on the results of the 2014 Reliability Study, GNPP requested that: 1) the Commission determine that the continued operation of the Ginna Facility is required to preserve system reliability; and 2) the Commission issue an Order directing RG&E to negotiate and file an RSSA for the continued operation of the Ginna Facility.<sup>11</sup> Concurrent with the filing of the Petition and the 2014 Reliability Study by GNPP, RG&E filed a letter indicating that it supported the 2014 Reliability Study analysis, which demonstrated that permanently retiring the Ginna Facility would threaten local reliability needs in RG&E's service territory.<sup>12</sup>

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<sup>8</sup> Case 14-E-0270, Additional Reliability Study for Exelon Corporation at 17 (May 12, 2014) (“2014 Reliability Study”). GNPP filed the 2014 Reliability Study with the Commission on July 11, 2014.

<sup>9</sup> Petition at 1.

<sup>10</sup> Id. at 4-5.

<sup>11</sup> Id. at 10.

<sup>12</sup> Case 14-E-0270, Response of RG&E to Petition (July 11, 2014).

On October 6, 2014, RG&E issued a Request for Proposals (“RFP”) soliciting alternatives to meet the reliability need that would result from the potential retirement of the Ginna Facility. RG&E received six responses to the RFP. RG&E submitted its analysis of the RFP responses to the Commission on December 23, 2014 (the “RFP Report”).<sup>13</sup> In addition, RG&E identified a set of transmission solutions, the Ginna Retirement Transmission Alternative (“GRTA”), that could shorten the duration of the RSSA and allow for the retirement of the Ginna Facility.<sup>14</sup> The GRTA also mitigates the urgency of RG&E’s Rochester Area Reliability Project and addresses other system reliability matters, such as stuck breaker contingencies.<sup>15</sup>

In the November Order, the Commission ruled that GNPP had demonstrated that the Ginna Facility is required to maintain system reliability and that its actions with respect to meeting the relevant retirement notice requirements were satisfactory.<sup>16</sup> The Commission also accepted the findings of the 2014 Reliability Study and stated that it established “the reliability need for continued operation of the Ginna Facility that is the essential prerequisite to negotiating an RSSA.”<sup>17</sup> As such, the Commission ordered RG&E and GNPP to negotiate an RSSA.<sup>18</sup>

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<sup>13</sup> RG&E submitted both a confidential and public version of the RFP Report.

<sup>14</sup> Case 11-T-0534 – Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of The Rochester Area Reliability Project, Letter from John D. Draghi to Administrative Law Judges Liebschutz and Phillips, at 3 (December 23, 2014). The GRTA consists of upgrades at Station 122 and uprates to certain 34.5 kV and 11.5 kV underground transmission lines. In addition, RG&E will construct a fifth bay of 345 kV circuit breakers at Station 80. Id. at 3-4.

<sup>15</sup> Id. at 2.

<sup>16</sup> November Order at 15, 24-25. Although GNPP did not cite a specific retirement date for the Ginna Facility, the Commission ruled that GNPP provided proper notice pursuant to the Commission’s Order Adopting Notice Requirements of Generation Unit Requirements issued on December 20, 2005 in Case 05-E-0889, imposing a 180-day retirement notice requirement, and the Order Providing for Lightened Regulation of Nuclear Generation Facility Owner issued on May 20, 2004 in Case 04-E-0030, imposing a six-month retirement notice requirement. Id. at 21-22. In reaching this determination, the Commission reasoned, in part, that because the 2014 Reliability Study was filed on the same date as the Petition, no additional time was required for the preparation and examination of such a reliability study. Id. at 18-19. As such, the Commission found that the purpose of the notice requirement, which was to provide sufficient time to assess whether adverse impacts on reliability might arise from the retirement of a generation facility, and to afford time to develop and implement alternatives, had been satisfied. Id. at 21-22.

<sup>17</sup> Id. at 17.

Per the November Order, the Parties entered into negotiations. The Parties reached an agreement in principle on an RSSA. On February 13, 2015, GNPP filed the executed RSSA with the FERC, along with a copy of its cost of service study and supporting materials. The terms of the RSSA are summarized below.

### **III. THE RSSA**

The term of the RSSA runs from the start of the hour ending 0100 EPT on April 1, 2015 and remains in effect through the hour ending 2400 EPT on September 30, 2018 (the “Initial Term”), thus matching the time period of the 2014 Reliability Study that establishes the reliability need for the Ginna Facility.<sup>19</sup> While the RSSA has a term of three and a half years, RG&E may, in its sole discretion, terminate the contract prior to the expiration of the Initial Term.<sup>20</sup> Pursuant to Section 2.2(c) of the RSSA, RG&E can terminate the agreement by providing twelve months’ prior written notice and making a “Settlement Payment.”<sup>21</sup> The RSSA also provides for the possibility of a “Necessary Extension” of the RSSA should the continued operation of the Ginna Facility be required for reliability purposes after the expiration of the Initial Term and any such extension shall be for a period of eighteen (18) months.<sup>22</sup> Notice of a Necessary Extension shall be provided no later than January 31, 2017.<sup>23</sup>

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<sup>18</sup> Id. at 27. With respect to RSSA costs, the Commission stated that “RG&E and Ginna are expected to support their positions on an RSSA with the economic analysis that will enable the Commission to determine the extent to which RSSA pricing is required. Additionally, it is expected that any RSSA resulting from these negotiations should address impacts of changes in economic circumstances and concomitant market electric prices on Ginna over time.” Id. at 23. As noted in Section III herein, the RSSA responds to changes in market revenues by providing RG&E customers with 85% of the energy and capacity market revenues. Should there be a substantial increase in market prices, RG&E customers would receive 85% of the increase.

<sup>19</sup> RSSA § 2.2(a). The RSSA is subject to certain termination provisions.

<sup>20</sup> Id. § 2.2(c). GNPP does not have an early termination option.

<sup>21</sup> The settlement payment compensates Ginna for the unrecovered portion of costs incurred by Ginna that would have been fully recovered had the RSSA run to term.

<sup>22</sup> RSSA § 2.3.

<sup>23</sup> Id.

As indicated, while the RSSA became effective upon execution on February 13, 2015, no payment obligation commences under the RSSA until: 1) the issuance by FERC of an order accepting the RSSA under Section 205 of the Federal Power Act, 16 U.S.C. § 824d and the regulations promulgated thereunder, without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party's reasonable discretion; and 2) the issuance by the Commission of an order (A) accepting the RSSA and (B) approving full and immediate cost recovery by RG&E through a surcharge mechanism (without offset or deferral including with respect to items unrelated to the RSSA) of all amounts payable to Ginna under the RSSA on a substantially current basis that coincides with the timing of all payments made by RG&E to Ginna under the RSSA, in each case without modifying or imposing any term or condition in a manner that is adverse in any material respect to a Party as determined in the affected Party's reasonable discretion.<sup>24</sup> Assuming such conditions are satisfied, pursuant to the proposed RSSA, RG&E would compensate GNPP through a Monthly Fixed Amount of approximately \$17.5 million,<sup>25</sup> net Applicable Revenues for each month.<sup>26</sup> In the RSSA, GNPP expressly agrees to accept the risk that GNPP may perform the reliability support obligations in accordance with the RSSA without any compensation from RG&E, or with reduced compensation, if the aforementioned conditions are not satisfied.<sup>27</sup>

In the event that the Acceptance Date is achieved after April 1, 2015, the RSSA allows Ginna to recoup payments that it would have been owed under the RSSA had the Acceptance

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<sup>24</sup> Id. § 2.1(a)(i) and (ii). The RSSA defines the date, if any, upon which each of the foregoing conditions precedent above are satisfied or waived by the Parties as the "Acceptance Date." Id.

<sup>25</sup> Id. §§ 1.1(ff) and 4.1(a).

<sup>26</sup> The RSSA defines "Applicable Revenues" as "RGE's eighty-five percent (85%) share of any Energy Revenues, RGE's eighty-five percent (85%) share of any Capacity Revenues and one hundred percent (100%) of any Ancillary Service Revenues...." Id. § 1.1(e).

<sup>27</sup> Id. § 2.1(d).

Date been achieved by April 1, 2015. Specifically, the RSSA states that GNPP shall track the net amount that would have been owed to GNPP under the RSSA had the Acceptance Date been achieved by April 1, 2015 (i.e., the Monthly Fixed Amount, net of Applicable Revenues, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by GNPP under the RSSA) for each calendar month (or any partial month) until the day immediately prior to the Acceptance Date (such cumulative net amount for such calendar months, the “Deferred Collection Amount”).<sup>28</sup> RG&E would pay the Deferred Collection Amount, plus interest on the unpaid balance thereof at the Commission-published interest rate for customer-provided capital that is applicable to investor-owned utilities, in equal monthly installments as part of GNPP’s monthly invoice amounts such that the final monthly installment of the Deferred Collection Amount would be paid on the invoice relating to March 2017.<sup>29</sup>

Section 4.3 of the RSSA also provides for the possibility that market conditions could change sufficiently such that GNPP may elect to stay operational after the expiration of the Agreement, in which case it would be appropriate for GNPP to repay RG&E customers for a portion of the RSSA costs. Specifically, the RSSA requires that if the Ginna Facility delivers energy to the NYISO transmission system or makes available capacity to the NYISO markets after seventy-five days following the end of the RSSA term, GNPP will pay RG&E the Capital Recovery Balance and the Capital Recovery Quarterly Return, as specified in the RSSA, via

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<sup>28</sup> Id. § 4.1(b).

<sup>29</sup> Id. In light of these aspects of the RSSA, RG&E and GNPP respectfully request that the Commission grant a make-whole provision as necessary, when it suspends the attached tariff pages.



quarterly payments over six or seven years.<sup>30</sup> The exact term over which the quarterly payments will be made is based on the total amount due to RG&E customers.<sup>31</sup>

The RSSA is the result of lengthy and carefully considered negotiations between GNPP and RG&E. The RSSA contains concessions from both sides, and is intended to be treated as a package. The RSSA is cost-justified because the payments required by the agreement are within the range of just and reasonable outcomes and are significantly lower than GNPP's claimed full cost of service, as demonstrated by the GNPP cost-of-service analysis filed at FERC. As indicated in its FERC filing, GNPP is willing to accept the lower rate in the interest of avoiding litigation and establishing a just and reasonable rate for reliability service in a timely manner. The RSSA is also narrowly tailored to address the reliability need identified in the 2014 Reliability Study. At the same time, it performs the essential function of such an RSSA agreement, in that it maintains reliability in the Rochester, New York area. Thus, the RSSA is just and reasonable, in the public interest and should be accepted by the Commission.

#### **IV. REQUEST FOR APPROVAL OF COST ALLOCATION AND COST RECOVERY SURCHARGE MECHANISM**

RG&E hereby respectfully requests Commission approval to recover all costs it incurs pursuant to the RSSA through an RSS Tariff Surcharge mechanism ("the RSS Surcharge"), thereby satisfying an RSSA condition precedent. RG&E's proposed RSS Surcharge is set forth in Exhibit B hereto.<sup>32</sup> The proposed RSS Tariff is nearly identical to the NYSEG RSS Tariff approved in Case 12-E-0400.<sup>33</sup>

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<sup>30</sup> Id. § 4.3(a).

<sup>31</sup> Id.

<sup>32</sup> The proposed tariff pages were also filed with the Commission via the Electronic Tariff System. In addition, a draft State Administrative Proceeding Act notice is attached hereto as Exhibit C.

<sup>33</sup> Case 12-E-0400 - Petition of Cayuga Operating Company, LLC to Mothball Generating Units 1 and 2, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (Dec. 17, 2012).

The RSS Surcharge would allow RG&E to recover costs incurred pursuant to the RSSA, including monthly fixed payment costs; outside service and consultancy costs; applicable capital expenditures; any other costs passed on by any third-party to ensure local reliability needs; and the Deferred Collection Amount. Any payments or credits received by the Company for energy and ancillary service revenues, any payments or credits received by the Company for capacity revenues, and any other applicable payments or credits by third parties (e.g., other utility payments) will offset these costs.

RG&E proposes to allocate the RSSA costs to the respective service classes based on the Company's embedded cost of service study from the Company's last rate proceeding.<sup>34</sup> Specifically, the RSSA costs would be allocated based upon the transmission plant allocation factors contained in that study. For non-demand billed service classifications, the resulting surcharge rates are on a cent per kWh charge, and for the demand billed service classifications, the resulting surcharge rates are on a dollar per kW charge, with the exception of Service Classification No. 14. For customers taking service under Service Classification No. 14, the RSS Surcharge will be collected through an As Used Demand charge. Any RSSA agreement costs incurred prior to the implementation of the RSSA Surcharge would be deferred, and recovered via the RSSA Surcharge over the remaining billing months through March 31, 2017.

RG&E has estimated that, over the term of the agreement, the average residential customer using 600 kWh per month will incur an approximately 4.2% rate increase (\$3.89/month) on its overall electric bill. The actual amount will vary monthly depending on the market price of energy supply and capacity. As a result, RG&E estimates that the rate change constitutes a "major change" under Section 66(12)(c) of the New York State Public Service Law

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<sup>34</sup> Case 09-E-0717 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service.

(“PSL”). PSL § 66(12)(f) provides that, when a utility files a schedule stating a new rate or change that is a “major change,” a hearing must be held “concerning the propriety of a change proposed by the filing.” Pending such a hearing, the Commission is authorized to suspend the effective date of a tariff that results in a major change for an initial 120 days, followed by an additional 6-month suspension period if the hearing cannot be concluded within the initial suspension period.

RG&E has filed the proposed RSS Surcharge effective April 1, 2015 with the expectation that the Commission will suspend the tariff’s effective date pending a hearing in this matter. However, the suspension periods authorized by PSL § 66(12)(f) are permissive, not mandatory. PSL Section 66(12)(f) states: “[p]ending such hearing and decision thereon, the [C]ommission, upon filing with such schedule and delivering to the utility, a statement in writing of its reasons therefor, may suspend the operation of such schedule, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect.” PSL § 66(12)(f) (emphasis added). Pursuant to the same PSL section, “the Commission may extend the suspension for a further period not exceeding six months” if the hearing cannot be held within the initial one hundred and twenty day period. *Id.* (emphasis added). The time frames referenced in the statute set an outer limit on the length of the suspension period (i.e., one hundred and twenty days and six months), but do not set a minimum period. The use of the word “may” in the statute and the lack of a minimum period make the statutory suspension periods permissive rather than mandatory. See N.Y. Stat. Law 177(b), cmt. (McKinney) (“Generally speaking, permissive or discretionary words in a statute are to be given a permissive interpretation...”). Given the permissive nature of the statutory language, the Commission is

not required to suspend RG&E's tariff filing to the full extent allowed by law<sup>35</sup> and the Company respectfully requests that the Commission take prompt action with respect to RG&E's proposed cost allocation and cost recovery surcharge mechanism such that the Commission can take final action in this matter at or prior to its April 2015 session.

Moreover, full and immediate recovery of any costs incurred under the RSSA is appropriate and necessary. Once the FERC and the Commission accept the RSSA and the Commission approves a cost recovery mechanism, the RSSA costs will be incurred by RG&E immediately - as it will require RG&E to submit monthly payments to GNPP for its continued operation of the Ginna Facility. Matching cost recovery with cost incurrence is appropriate to ensure that the cash flows of RG&E are not negatively impacted, which would have detrimental impacts on financial and credit metrics of the Company. Customers will receive the benefits of the RSSA immediately through continued reliability and it is therefore appropriate for customers to incur the costs concurrently with the benefits. Recovery of the RSSA costs on a current basis properly matches the reliability benefits with cash flows of the Company, therefore mitigating any potential harm to its credit rating and resulting cost to customers. Thus, RG&E requests approval of its proposed cost allocation and cost recovery surcharge mechanism.

## V. CONCLUSION

As the November Order concluded, retiring the Ginna Facility would create a reliability need. GNPP has stated that the RSSA is needed to keep the Ginna Facility operational and

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<sup>35</sup> See MCI Telecommunications Corp. v. Pub. Serv. Comm'n of N.Y., 231 A.D.2d 284, 293 (3d Dep't 1997) (stating "[w]hile new service offerings are generally subject to PSC investigations and suspensions, we note first that this suspension power is purely discretionary") (internal citations omitted); Case 08-E-0539, et al. - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Ruling on Motion to Strike at 12 (Nov. 4, 2008) (stating "[t]urning to PSL § 66(12)(f), this statute affords the Commission discretion to suspend rate case filings and to take up to approximately eleven months for the hearing process to run its course and for the Commission to render a decision.") (emphasis added).

maintain electric system reliability within RG&E's service territory. RG&E respectfully requests Commission acceptance of the RSSA without modification.

RG&E also requests approval to implement an RSS Surcharge mechanism in the manner described herein to allow for full and immediate recovery of costs incurred pursuant to the RSSA.

Dated: February 13, 2015

Respectfully submitted,



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