

September 15, 2014

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 14-E-0270 – Petition for Initiation of Proceeding to Examine Proposal for
Continued Operation of R.E. Ginna Nuclear Power Plant

Dear Secretary Burgess:

Attached for filing in the above-referenced proceeding are the Comments in Opposition of Multiple Intervenors. These Comments in Opposition are submitted in accordance with the notice published in the July 30, 2014 edition of the *New York State Register* (I.D. No. PSC-30-14-00024-P). Copies of the attached Comments in Opposition also are being served herewith on the active parties to this proceeding, as well as counsel for Rochester Gas and Electric Corporation.

Very truly yours,

COUCH WHITE, LLP

Michael B. Mager

Michael B. Mager

MBM/cgw
Attachment

cc: Active Parties (via E-Mail; w/attachment)
Noelle M. Kinsch, Esq. (via E-Mail; w/attachment)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition for Initiation of Proceeding to Examine
Proposal for Continued Operation of R.E. Ginna
Nuclear Power Plant**

Case 14-E-0270

**COMMENTS IN OPPOSITION
OF MULTIPLE INTERVENORS**

Dated: September 15, 2014

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INITIAL STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the Rochester Gas and Electric Corporation (“RG&E”) service territory, hereby submits its Comments in Opposition in response to the “Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R.E. Ginna Nuclear Power Plant” (the “Petition”), which was filed with the New York State Public Service Commission (“Commission”) on July 11, 2014 by Exelon Corporation (“Exelon”), Constellation Energy Nuclear Group, LLC (“CENG”), and R.E. Ginna Nuclear Power Plant, LLC (“GNPP”) (Exelon, CENG and GNPP collectively are referred to herein as “Petitioners”).¹ Comments on the Petition were solicited via a notice published in the July 30, 2014 edition of the *New York State Register* (I.D. No. PSC-30-14-00024-P) (the “Notice”).

A. The Petition

The Petition pertains to the R.E. Ginna Nuclear Power Plant (“Ginna Facility”), a 581 MW single-unit nuclear generation facility located approximately 20 miles northeast of Rochester, New York within the RG&E service territory. (Petition at 3.) Based on the Petition, it appears that GNPP is the direct owner, and Exelon and CENG are indirect owners, of the Ginna Facility. (*Id.* at 3-4.) Previously, Petitioners’ affiliates acquired the Ginna Facility from RG&E in 2004. As part of that transaction, such affiliates entered into a ten-year power purchase agreement (“PPA”) with RG&E, pursuant to which the utility agreed to purchase 90% of the Ginna

¹ This proceeding has been denominated as Case 14-E-0270, *Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R.E. Ginna Nuclear Power Plant*.

Facility's output. (*Id.* at 4.) The PPA for the Ginna Facility expired on June 30, 2014 (*id.* at 1), 11 days before the Petition was filed.

Petitioners report that, in January 2014, representatives of CENG met with (i) individual, unidentified Commissioners, (ii) unidentified representatives of New York State Department of Public Service Staff ("Staff"), (iii) RG&E, and (iv) the New York Independent System Operator, Inc. ("NYISO"). (Petition at 1-2, 5.) At such meetings, CENG's management reportedly advised those parties that it had determined that prospective wholesale market revenues would be insufficient to cover the Ginna Facility's costs going forward subsequent to the PPA's expiration and, therefore, Petitioners were *considering* retiring the Ginna Facility. (*Id.* at 2, 5.) CENG's management further advised that it was willing to continue the Ginna Facility's operations pursuant to an acceptable Reliability Support Services Agreement ("RSSA"). (*Id.*) Petitioners claim that continued operation of the Ginna Facility is needed for reliability. (*Id.* at 6-7.) The Petition does not state that any decision to retire the Ginna Facility has been made.

Petitioners request in the Petition an order from the Commission: (a) finding that the "Additional Reliability Study for Exelon Corporation: Evaluation of the Impact of the Retirement of the Ginna Nuclear Generation Station On the New York State Transmission System," dated May 12, 2014 (the "Reliability Study"), establishes a need for the Ginna Facility's continued operation; (b) directing RG&E and GNPP to negotiate and file, by December 1, 2014, an RSSA "of an appropriate duration and with a commencement date of no earlier than January 11, 2015"; and (c) finding that Petitioners' communications with individual Commissioners, Staff, RG&E and the NYISO, including the filing of the Petition and the Reliability Study, "constitute full and sufficient notice to the Commission to satisfy the advance notice requirements with respect

to consideration of retirement generally and the Ginna Facility specifically.” (*Id.* at 8-10.)

B. Multiple Intervenors’ Motion to Dismiss

On July 29, 2014, Multiple Intervenors filed with the Commission a motion to dismiss the Petition (“Motion”). In its Motion, Multiple Intervenors: (a) relying on Commission orders applicable to the Ginna Facility specifically and owners of major generation facilities generally, identified the retirement notice requirements applicable to Petitioners in this instance (Motion at 4-5);² (b) demonstrated that Petitioners have failed to satisfy the applicable retirement notice requirements (Motion at 5-6); (c) explained why informal meetings, the filing of the Petition, and the filing of the Reliability Study do *not* satisfy the applicable retirement notice requirements (*id.* at 6-9); and (d) asserted that the relief sought by Petitioners, absent full compliance with the applicable retirement notice requirements, would establish a terrible precedent contrary to the public interest (*id.* at 9-14).

Multiple Intervenors’ Motion focused solely on the procedural defects associated with the Petition and Petitioners’ requests for relief. The Motion did not address the merits – or

² See Case 04-E-0030, *Petition of R.E. Ginna Nuclear Power Plant, LLC for a Declaratory Ruling on Regulatory Regime*, Order Providing Lightened Regulation of Nuclear Generation Facility Owner (issued May 20, 2004) (hereinafter, “Ginna Order”) at 6 (requiring the owners of nuclear generating facilities to “file a notice with the Secretary to the Commission if a permanent shutdown of a nuclear unit for economic reasons is planned”), and Case 05-E-0889, *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005) (hereinafter, “Retirements Order”) at 15-16 (requiring the owners of major generation facilities of 80 MW or greater to “provide written notice of a proposed retirement at least 180 days prior to the time the requirement is effectuated” and to serve such written notice on the Commission Secretary, the NYISO and any affected utility, and also requesting that the NYISO notify its market participants of any retirement notice that it receives).

lack thereof – of the Petition itself, including Petitioners’ reliance on the Reliability Study as justification for an RSSA.³

C. Petitioners’ Response

On August 6, 2014, Petitioners filed with the Commission a response in opposition (“Response”) to Multiple Intervenors’ Motion. In its Response, Petitioners argue that: (a) the retirement notice requirements are a policy and, therefore, strict compliance therewith is not necessary (Response at 2, 5); (b) GNPP provided full and sufficient notice consistent with the Commission’s policy rationale (*id.* at 3-5); and (c) Multiple Intervenors’ interpretation of the retirement notice requirements is too narrow (*id.* at 6).

D. Organization of These Comments in Opposition

Multiple Intervenors’ Motion currently is pending before the Commission. Multiple Intervenors continues to contend that the Petition should be dismissed for the reasons stated in its Motion.⁴ These Comments in Opposition, submitted in compliance with the Notice, are organized into two points. In Point I, Multiple Intervenors demonstrates that its Motion should be granted notwithstanding the arguments advanced by Petitioners in their Response. In Point II,

³ In its Motion, Multiple Intervenors reserved explicitly its rights to comment on the Reliability Study later in the proceeding. *See* Motion at 2, n.3.

⁴ Such dismissal presumably would be without prejudice, until, at the earliest, Petitioners have satisfied the applicable notice requirements regarding the retirement of generation facilities. Even if, *arguendo*, Petitioners were to comply with the retirement notice requirements – something they inexplicably have refrained from doing even in the face of Multiple Intervenors’ Motion – their entitlement to an RSSA still would be contingent upon, *inter alia*, (i) completion of a reliability study conducted independently by the NYISO and RG&E (as opposed to the aforementioned Reliability Study, which Multiple Intervenors understands was performed on behalf of Exelon using selected assumptions chosen by Exelon), (ii) study results which demonstrate that a reliability problem would be created by the retirement of the Ginna Facility, and (iii) the absence of alternative solutions to such reliability problem that are more economical for customers than an RSSA.

Multiple Intervenors demonstrates that Petitioners' reliance on the Reliability Study as justification for an RSSA is misplaced and that further reliability analyses are needed, along with an evaluation of possible alternatives to an RSSA.

ARGUMENT

POINT I

MULTIPLE INTERVENORS' MOTION SHOULD BE GRANTED

Petitioners advance three primary arguments in opposition to Multiple Intervenors' Motion. For the reasons set forth below, those arguments are without merit and should be rejected. The Petition should be dismissed, as advocated in the Motion, until such time that Petitioners comply with the Commission's well-established retirement notice requirements.

A. Petitioners' Characterization of the Retirement Notice Requirements as a Policy Is Incorrect Both Factually and Legally; Such Requirements Are Binding Upon Petitioners

Initially, Petitioners characterize the retirement notice requirements as a policy, with the implication being that compliance therewith somehow is not mandatory. (Response at 2, 5.) Petitioners are wrong. The retirement notice requirements were set forth in two orders issued by the Commission and, therefore, they are binding upon Petitioners.

The Commission is more than capable of issuing policy statements when it so chooses. For instance, the Commission recently issued a policy statement relating to transmission

planning, entitled: “Policy Statement on Transmission Planning for Public Policy Purposes.”⁵ The retirement notice requirements at issue here, however, were *not* embodied in a policy statement.

Instead, the retirement notice requirements applicable to Petitioners were established by orders of the Commission. For instance, in Case 04-E-0030, related specifically to the Ginna Facility, the Commission issued an “Order Providing for Lightened Regulation of Nuclear Generation Facility Owner” (defined in the Motion and herein as the “Ginna Order”). Similarly, in Case 05-E-0889, applicable to all owners of major generation facilities, the Commission issued an “Order Adopting Notice Requirements for Generation Unit Retirements” (defined in the Motion and herein as the “Retirements Order”). Furthermore, before issuing the Retirements Order, the Commission published notice of a “Proposed Rule Making” regarding retirement notice requirements.⁶

Thus, Petitioners’ attempt to characterize the retirement notice requirements as part of a policy statement, instead of a binding Commission order, must be rejected as unsupported by the facts and the law. As enumerated in two orders, the retirement notice requirements are binding upon Petitioners (and other similarly-situated generation owners) unless or until changed or

⁵ Case 14-E-0068, *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Transmission Planning for Public Policy Purposes*, Policy Statement on Transmission Planning for Public Policy Purposes (issued August 15, 2014).

⁶ See Proposed Rule Making, I.D. No. PSC-32-05-00007-P, published in August 10, 2005 edition of the *New York State Register*. Thus, Petitioners’ argument that “policy statements do not have the force of rules” (Response at 5) is inapposite. The retirement notice requirements were in fact the subject of a notice of proposed rulemaking and promulgated in Commission orders and not as part of a policy statement. Moreover, the clear directives contained in the Ginna Order and the Retirements Order (*see* Motion at 4-5) leave no “wobble room” for incomplete compliance.

abrogated by the Commission. N.Y. Pub. Serv. Law § 23. Indeed, failure to comply with a Commission order can constitute grounds for financial penalties. *Id.* at § 25.⁷

Petitioners also mischaracterize slightly – but importantly – the purpose of the retirement notice requirements. Petitioners claim that the Commission determined that “generators should provide advance notice that they *might* retire so that system impacts could be studied and identified and any next steps – including build out of transmission or entering into contracts for continued operation of the generating facility for a period – could be taken to ensure system reliability and local reliability.” (Response at 2; emphasis added.) Putting aside for the moment the fact that Petitioners have failed to provide any written notice here, the retirement notice requirements insist upon written notice where a retirement is “planned” or “proposed.”⁸

The difference between a “planned” or “proposed” retirement on the one hand, and a case where a generation facility “might” be retired on the other hand, is substantial and material with respect to the possible applicability and appropriateness of an RSSA. Where the owner of a generation facility has submitted written notice of a planned or proposed retirement, it is clear that such owner already decided to retire said facility. In that case, it might be appropriate to utilize an RSSA if (i) the facility in question is needed for reliability, and (ii) there are no preferable alternatives to an RSSA notwithstanding broad public notice of the impending retirement.

⁷ Petitioners also attempt to distinguish Commission orders from statutes or regulations. (Response at 5.) Again, Petitioners misconstrue the law. The New York Public Service Law makes it clear that every corporation (including each of the Petitioners) must comply with “every provision of this chapter and every order or regulation adopted under authority of this chapter so long as the same shall be in force.” N.Y. Pub. Serv. Law § 25(1). Thus, the retirement notice requirements applicable to the Ginna Facility, which are set forth in two Commission orders, have the same legal and binding effect on Petitioners as a statute or regulation.

⁸ Case 04-E-0030, *supra*, Ginna Order at 6; Case 05-E-0889, *supra*, Retirements Order at 15.

Conversely, however, it would be inappropriate – and contrary to the public interest – to mandate the execution of a customer-funded RSSA where the generation owner has not even made, and communicated in writing, the decision to retire its facility. The Commission should not place itself in the position of having to evaluate which generation facilities “might” retire and which facilities “might not” retire.⁹ Similarly, the NYISO should not be forced to speculate as to what actions – other than written notice filed with the Commission Secretary (as specified in two Commission orders) – somehow constitutes public notice of an impending generator retirement that should be posted on its website and shared with market participants.

B. Petitioners Have Not Provided Full and Sufficient Notice of an Intent to Retire the Ginna Facility

Next, Petitioners argue that GNPP provided full and sufficient notice consistent with the Commission’s policy rationale. (Response at 3-5.) As set forth in the Motion, neither GNPP or any subset of Petitioners complied with the retirement notice requirements because there has yet to be any written notice of an impending retirement filed with the Secretary of the Commission, nor has any such notice been served on the NYISO (as evidenced by the lack of any posting of such notice by the NYISO). (*See* Motion at 5-6.)¹⁰

⁹ Petitioners’ interpretation of the retirement notice requirements would serve as an invitation to other generation owners to claim or threaten informally that they too “might” retire their generation facilities absent an acceptable RSSA, thereby obviating any need to make a corporate decision to retire such facility or provide written notice of such decision. Indeed, if the precedent desired by Petitioners is established, the retirement notice requirements essentially would be rendered meaningless – why would the owner of a generation facility suspected to be needed for reliability ever make a decision to retire such facility or file written notice of an impending retirement with the Commission when it simply can meet informally with individual, unidentified Commissioners and Staff representatives?

¹⁰ *See also* NYISO website, under the heading entitled, “Planned Generation Retirements,” at: http://www.nyiso.com/public/markets_operations/services/planning/documents/index.jsp (listing retirement notices received by the NYISO from generation owners other than Petitioners).

Petitioners assert that its actions “are in keeping with an in furtherance of the Commission’s policy objectives and led to the same result contemplated by the Commission’s policies.” (Response at 4.) Multiple Intervenors disagrees. Petitioners’ actions have not led to the same result as strict compliance with the retirement notice requirements. For one thing, as addressed above, it currently is not known whether Petitioners really would decide to retire the Ginna Facility absent an RSSA. Where the Commission previously mandated the use of RSSAs, the owners of the generation facilities in question already had decided to retire or mothball those facilities and provided written notice of such decisions to the Commission.¹¹ Here, it is not at all clear that Petitioners would in fact retire the Ginna Facility absent an RSSA (in which case, it would be inappropriate for the Commission to force customers to fund an out-of-market contract that may not be needed).¹²

Moreover, “the same result” has not been achieved because the marketplace has yet to receive public notice of the Ginna Facility’s planned (or threatened) retirement. Pursuant to the Retirement Order, owners of major generation facilities are supposed to file written notice of a

¹¹ See generally Case 12-E-0136, *Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements*, Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery (issued August 16, 2012), and 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 (issued December 17, 2012).

¹² In their Response, Petitioners reference financial losses incurred in recent years including the allocation of CENG corporate overhead. (Response at 4.) Such information, in a vacuum, is hardly dispositive. For instance, it is not clear how profitable the Ginna Facility may have been during the first seven years of the PPA, or how corporate overhead costs are being allocated by Petitioners. Perhaps more importantly, Petitioners have not disclosed, at least publicly, forward-looking revenue and income projections, nor to Multiple Intervenors’ knowledge have such projections been evaluated. Thus, while it is possible that Petitioners would decide to retire the Ginna Facility, such possibility has yet to be demonstrated because no such decision apparently has been made and no public notice to that effect has been filed with the Commission.

proposed retirement with the Commission Secretary and serve same on the NYISO, which has been requested to notify its market participants of any retirement notice that it receives.¹³ Such notice by the NYISO enables all market participants to consider potential alternatives to an RSSA, including generation, transmission and targeted demand response. Significantly, however, the NYISO has not provided any public notice of a planned retirement of the Ginna Facility because it has not received written notice of any such retirement decision. Consequently, there is no evidence that “the same result” has occurred here. Rather, the evidence suggests that the broad, public notice of a planned retirement desired by the Commission when it formulated its retirement notice requirements has not yet occurred. Indeed, one could argue that by failing to comply with such requirements, Petitioners are attempting to forestall the consideration of any alternatives to the continued operation of the Ginna Facility under an RSSA.

Additionally, when decisions recently were made to retire or mothball the Dunkirk and Cayuga generation facilities located in Dunkirk and Lansing, New York, respectively (hereinafter, “Dunkirk Facility” and “Cayuga Facility”), and written notices of those decisions properly were filed with the Commission’s Secretary, Staff then formally requested the NYISO and the impacted utility to conduct independent reliability studies concerning the anticipated closure of those facilities.¹⁴ Upon information and belief, because Petitioners have failed to provide written notice of a planned retirement of the Ginna Facility, as required by retirement

¹³ Case 05-E-0889, *supra*, Retirements Order at 15-16.

¹⁴ *See* Letter to NYISO and Niagara Mohawk Power Corporation d/b/a National Grid from Thomas G. Dvorsky, Director, Office of Electric, Gas and Water at the New York State Department of Public Service, dated March 21, 2012 (relating to the Dunkirk Facility) and Letter to NYISO and New York State Electric & Gas Corporation from Thomas G. Dvorsky, Director, Office of Electric, Gas and Water at the New York State Department of Public Service, dated July 25, 2012 (relating to the Cayuga Facility). Copies of these two letters are posted on the Commission’s website under Case 05-E-0889, *supra*.

notice requirements, Staff has yet to request that the NYISO and RG&E conduct an independent reliability study concerning the possible closure of the Ginna Facility. As addressed, *infra*, such an independent reliability study likely would differ from the Reliability Study commissioned by Exelon.

For the foregoing reasons, Petitioners have not provided full and sufficient notice of the planned retirement of the Ginna Facility. Indeed, based upon the Petition, the actual decision to retire the Ginna Facility has yet to be made. Moreover, Petitioners' non-compliance with the retirement notice requirements has *not* led to the same results that were contemplated when those requirements were established.

C. Multiple Intervenors' Interpretation of the Commission's Retirement Notice Requirements Is Not Too Narrow

Petitioners argue that Multiple Intervenors' literal reading of the Commission's retirement notice requirements somehow is too narrow. (Response at 6.) Multiple Intervenors disagrees strongly.

Initially, it is worth noting that the Commission's retirement notice requirements were established in 2005. Since that time, other than Petitioners, not a single generation owner planning to retire or mothball its generation facility has failed to comply with those requirements. Indeed, virtually every year since those requirements were established, one and often multiple generation owners managed to file the requisite written notification with the Commission Secretary without controversy or hardship (neither of which has been demonstrated here). Given the clear requirements contained in two separate Commission orders applicable to Petitioners, and the incredible ease in which Petitioners could comply with those requirements (*i.e.*, the filing of a

simple, one-page letter announcing the decision to retire the Ginna Facility), Petitioners' non-compliance is inexcusable.

Next, Petitioners argue that "MI's interpretation of the Commission's policies regarding generation unit retirements ... would unnecessarily cause the type of disruption that the Commission's policies seek to avoid." (*Id.*) Petitioners' argument lacks merit for at least two reasons. First, Petitioners have failed to specify any type of disruption that would occur were they to comply with the retirement notice requirements like every other similarly-situated generation owner before them. Second, if, by "disruption," Petitioners are referring to public notice of a retirement decision, then that is exactly what is required by the requirements. Before the Commission even considers mandating that a utility enter into an RSSA, it requires, appropriately, that the generation owner make and publicly announce a decision to retire or mothball its facility. Such requirement (i) puts the entire market on notice of the impending retirement or mothballing, thereby allowing alternatives to be advanced for consideration, and (ii) ensures that the Commission does not direct the use of scarce customer funds on an RSSA where the generation owner has not even made a final decision to retire or mothball its facility (which appears to be the case here). Where a generation owner is seeking an out-of-market, customer-funded RSSA, the very least that it can do is represent to the Commission, in writing, that it has decided to retire or mothball its facility.¹⁵

Finally, Petitioners assert that "a public written notice that the Ginna Facility will retire would have been particularly disruptive to the Facility's employees and the local

¹⁵ To hold otherwise would be patently unfair to customers, who should not be forced to pay the costs of an RSSA to a generation owner that was not even going to retire or mothball its facility.

communities that rely on the Facility's jobs and tax revenues." (*Id.* at n.6.) Multiple Intervenors' response to this assertion is threefold. First, Petitioners were made aware of the written retirement notification requirement prior to their purchase of the Ginna Facility and they willingly entered into that transaction without challenging the Commission's Ginna Order. Thus, they should not be heard to complain about it now. Second, Petitioners have not demonstrated that they are different, in any material respect, from every other generation owner that willingly and successfully complied with the retirement notice requirements.¹⁶ Third, although it would not excuse Petitioners' clear non-compliance, they also have failed to demonstrate how or why filing written notice of a planned retirement in compliance with the retirement notice requirements is any more disruptive than filing a petition with the Commission threatening such retirement absent an RSSA.

For the foregoing reasons, as well as those set forth in its Motion, Multiple Intervenors' Motion to dismiss the Petition should be granted in this proceeding.

POINT II

PETITIONERS' RELIANCE ON THE RELIABILITY STUDY AS SUPPORT FOR AN RSSA IS MISPLACED

Petitioners rely on the Reliability Study as proof positive that a threatened retirement of Ginna definitely would create a reliability problem necessitating an RSSA. While further analyses may demonstrate the need for an RSSA (assuming Petitioners file written notice of an impending retirement with the Commission, such notice is posted on the NYISO's website,

¹⁶ While the filing of a written retirement notice may be disruptive to employees at the Ginna Facility, that clearly is what is required by the Commission and, from the perspective of RG&E's customers, an RSSA would be extremely disruptive and expensive. Thus, the Commission must protect the public interest and ensure that it refrains from mandating an RSSA in situations where the generation owner has not even made and communicated in writing a final decision to retire its facility.

and an alternative, near-term solution is not identified), Petitioners' reliance on the Reliability Study is misplaced.

Initially, as demonstrated, *supra*, in other instances of an impending retirement or mothballing, such as the circumstances pertaining to the Dunkirk Facility and the Cayuga Facility, the Commission requested that the NYISO and the impacted utility conduct an independent reliability study. That has not occurred here. Instead, Exelon commissioned the Reliability Study from the NYISO, and that study is different from what an independent reliability study would analyze.

Initially, the Reliability Study commissioned by Exelon apparently relies on data that has since been updated. For instance, the Reliability Study uses the NYISO's 2013 Load and Capacity Data Report. (*See, e.g.*, Reliability Study at 5.) The NYISO's 2014 Load and Capacity Data Report was issued on May 27, 2014, before the Petition was filed.¹⁷ Multiple Intervenors also understands that the base case for the current NYISO Reliability Needs Assessment is different from what was relied upon in the Reliability Study. Additionally, the Reliability Study only examines selected years (*i.e.*, 2015 and 2018) chosen by Exelon. (*See, e.g.*, Reliability Study at 5.)

If Petitioners were to decide to retire the Ginna Facility and file written notice of such decision with the Commission, as required by the retirement notice requirements set forth in the Ginna Order and the Retirements Order, the following steps presumably would occur: (a) the Commission would request that the NYISO post Petitioners' retirement notice, thereby providing

¹⁷ NYISO, 2014 Load and Capacity Data, available at: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2014_GoldBook_Final.pdf.

broad public notice of the impending retirement and the possible need for alternate solutions; (b) Staff would request the NYISO and RG&E to conduct an independent reliability study, similar to those undertaken with respect to the Dunkirk Facility and the Cayuga Facility; and (c) the NYISO and RG&E would perform such reliability study utilizing a base case consistent with present circumstances (*e.g.*, relying on the 2014 Load and Capacity Data Report, the current base case assumptions in the Reliability Needs Assessment) and not necessarily limited to two years selected by Exelon. Whether and to what extent such a reliability study would conform be consistent (or inconsistent) with the Reliability Study filed with the Petition is unknown at this point, but that is because Petitioners failed to comply with the Commission's retirement notice requirements, thereby setting this matter off on a course divergent from every other generation owner that, over the last decade, decided to retire or mothball its facility.

For the foregoing reasons, Petitioners' reliance on the Reliability Study is misplaced. Should Petitioners decide to retire the Ginna Facility, they should be directed to file written notice of that decision with the Commission. At that time, the marketplace should be placed on notice of the Ginna Facility's impending retirement, and the reliability impacts of that retirement should be analyzed independently by the NYISO and RG&E using the most current information and assumptions. If that reliability analysis indicates that the retirement of Ginna would jeopardize reliability, alternative solutions should be solicited. If no such solutions identified in time, then an RSSA should be considered (*i.e.*, as a last resort, not the first option).

CONCLUSION

For all the foregoing reasons, as well as those set forth in the Motion, Multiple Intervenors urges the Commission to dismiss the Petition at this time. Alternatively, if considered on the merits, the Petition should be denied.

Dated: September 15, 2014
 Albany, New York

Respectfully submitted,

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